TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 48

ROSE STAUB, APPELLANT,

vs.

CITY OF BAXLEY.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA.

FILED NOVEMBER 29, 1956

PROBABLE JURISDICTION NOTED JANUARY 14, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 48

ROSE STAUB, APPELLANT,

vs.

CITY OF BAXLEY.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA

INDEX

	Original	Print
Proceedings in the Court of Appeals of the State of Georgia	1	1
Excerpts from bill of exceptions	1	1
Record from the Superior Court of Appling County, State of Georgia	12	4
Petition for writ of certiorari to the Mayor's Court of the City of Baxley	12	4
Exhibit 1—Summons	19	9
Exhibit 2—Ordinance of the City of Baxley adopted September 17, 1949	20	9
Exhibit 3—Plea in abatement filed in Mayor's Court	23	12
Exhibit 4—Brief of the Evidence	30	15
Testimony of W. A. Schuman—		
direct	30	15
cross	31	16
Louise Bowyer—		
direct	31	17
cross	33	18
redirect	34	18
recross	34	19
redirect	34	19
recross	34	19

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 23, 1957

	Original	Print
Record from the Superior Court of Appling County, State of Georgia—Continued		
Petition for writ of certiorari to the Mayor's Court of the City of Baxley—Continued		
Exhibit 4—Brief of the Evidence—Continued		
Testimony of Catherine Taylor—		
direct	34	19
cross	37	21
Sylvia Dixon—		
direct	38	22
cross	39	22
Lois Taylor Sharp—		
direct	41	23
cross	41	23
Statement by Rose Staub	42	23
Answer to petition for certiorari	51	25
Exception and traverse to answer	54	27
Finding for respondent	61	31
Judgment	62	32
Judgment on remittitur	63	33
Statement by the Court	66	34
Opinion, Gardner, P.J.	72	37
Judgment	76	39
Order denying motion for rehearing	96	39
Proceedings in the Supreme Court of Georgia	98	39
Notice of filing petition for certiorari	98	39
Order denying application for writ of certiorari	99	40
Notice of appeal to Supreme Court of the United States	100	40
Order noting probable jurisdiction	107	45

[fol. 1] **IN THE COURT OF APPEALS OF THE STATE OF GEORGIA**

ROSE STAUB, Plaintiff in Error,

v.

CITY OF BAXLEY, Defendant in Error

EXCERPTS FROM BILL OF EXCEPTIONS

BE IT REMEMBERED that on the 10th day of April, 1954, within the time allowed by law, Rose Staub presented her petition for writ of certiorari to the Superior Court of Appling County, Georgia, and to the Honorable Douglas F. Thomas, Judge of said Court, to review her conviction in the Mayor's Court of the City of Baxley, Georgia, for violation of an ordinance of the City of Baxley prohibiting the solicitation of members for an organization without a permit and license, and on the same date the Honorable Douglas F. Thomas, Judge as aforesaid, sanctioned said petition for writ of certiorari and ordered writ of certiorari to issue, and, in compliance therewith, the Clerk of the said Superior Court filed said petition and writ and issued writ of certiorari directed to the Honorable J. M. Dunn, Judge of the Mayor's Court of the City of Baxley, directing him to send up, under his hand and seal, all the facts and proceedings in said case sought to be reviewed to the next regular October Term, 1954, of the Superior Court of Appling County, Georgia, to be held on the third Monday in October, 1954, and service of the same was duly acknowledged.

AND BE IT FURTHER REMEMBERED, that on the 11th day of October, 1954, the Honorable J. M. Dunn, Judge of the Mayor's Court of the City of Baxley, filed his answer to said writ of certiorari, copy of same was duly served upon counsel for plaintiff in certiorari, and on the 20th day of [fol. 2] October, 1954, plaintiff in certiorari filed her exceptions and traverse to said answer to the writ of certiorari, notice and copy of which was duly served upon counsel of

record for defendant in certiorari, all previous to the calling of said case in its order and at the return term thereof.

Thereafter, at the regular October Term, 1954, of the Superior Court of Appling County, Georgia, and on the 13th day of November, 1954, after having been duly continued, it being stipulated by both parties that all issued of fact and law should be submitted to and decided by the said Honorable Douglas F. Thomas, Judge as aforesaid, without the intervention of a jury, there came on to be tried the issues presented by the exceptions and traverse of the plaintiff in certiorari to the answer to the writ of certiorari, and, after evidence had been introduced by both parties and argument had, the Honorable Douglas F. Thomas, Judge as aforesaid, overruled said exceptions and traverse of the plaintiff in certiorari to the answer to the [fol. 3] writ of certiorari and sustained the answer to the writ of certiorari, and, on written motion of defendant in certiorari, dismissed said petition for writ of certiorari and writ of certiorari on the ground that the certiorari bond had been improperly approved and filed, to which judgment of the Court overruling the exceptions and traverse of the plaintiff in certiorari to the answer to the writ of certiorari and sustaining the answer to the writ of certiorari and the judgment of the Court dismissing said petition for writ of certiorari and writ of certiorari exceptions were duly taken by the plaintiff in certiorari.

Thereupon, plaintiff in certiorari appealed said case by writ of error to this Honorable Court, the same being Case Number 35554, returnable to the February Term, 1955, thereof, and on the 17th day of March, 1955, this Honorable Court reversed the judgment of the lower court on the ground that the evidence demanded a finding that the traverse to the answer to the writ of certiorari should have been sustained and that the Court erred in dismissing the proceedings and ordered that the petition for writ of certiorari be considered on its merits, which judgment was duly made the judgment of the said Superior Court of Appling County, Georgia.

Thereafter, and on the 10th day of December, 1955, after having been duly continued, said case came on regularly to be tried on its merits in accordance with the judgment of

this Honorable Court at the November Term, 1955, of the Superior Court of Appling County, Georgia, before the Honorable Douglas F. Thomas, Judge thereof presiding, and, after argument had, the Court overruled the petition for writ of certiorari and sustained the judgment of the [fol. 4] Mayor's Court of the City of Baxley, Georgia, convicting plaintiff in certiorari of violation of the ordinance of the City of Baxley prohibiting the solicitation of members for an organization without a permit and license, to which judgment of the Court overruling the petition for writ of certiorari and sustaining the judgment of the Mayor's Court of the City of Baxley convicting plaintiff in certiorari of violation of said ordinance of the City of Baxley plaintiff in certiorari then and there excepted, now excepts and assigns the same as error, on the ground that same was contrary to law, and says that said Court should have sustained the petition for writ of certiorari on each and every ground and assignment of error contained therein and reversed the judgment of the Mayor's Court of the City of Baxley convicting plaintiff in certiorari of violation of said ordinance of the City of Baxley. The judgment and order of the Court overruling the petition for writ of certiorari and sustaining the judgment of the Mayor's Court of the City of Baxley thus illegally terminated the case.

Rose Staub names herself as plaintiff in error, and the City of Baxley as defendant in error, in this bill of exceptions.

The Court of Appeals of Georgia has jurisdiction of this case for the reason that same involves the question of the constitutionality and validity of a municipal ordinance and a conviction for violation thereof.

[fol. 12] IN THE SUPERIOR COURT OF
APPLING COUNTY, GEORGIA

PETITION FOR WRIT OF CERTIORARI—FILED APRIL 10, 1954

The petition of Rose Staub shows to the Court the following facts, to-wit:

1. That on the 19th day of February, 1954, petitioner was arrested by Wilton A. Schuman, Chief of Police of the City of Baxley, Appling County, Georgia, and charged with the offense of soliciting members for an organization without a permit and license by written summons requiring petitioner to be and appear before the Mayor's Court of said City of Baxley on the 22nd day of February, 1954, to answer to said charges, a copy of said summons being hereto attached, marked Exhibit 1, and hereby referred to and made a part of this petition and paragraph.

2. After having been duly continued, said case against petitioner came on regularly to be tried in the Mayor's Court of said City of Baxley, Appling County, Georgia, on the 15th day of March, 1954, before Honorable J. M. Dunn, Mayor, presiding, said case being tried by agreement of counsel with another related case against Mamie Merritt.

3. The complete and entire ordinance of said City of Baxley, the violation of which petitioner was charged, is hereto attached, marked Exhibit 2, and hereby referred to and made a part of this petition and paragraph.

4. To said charge and summons, petitioner filed her plea in abatement attacking the constitutionality and reasonableness of said ordinance and alleging the same was unconstitutional, null and void upon the grounds set forth therein, copy of said plea in abatement being hereto attached, marked Exhibit 3, and hereby referred to and made [fol. 13] a part of this petition and paragraph.

5. On the 15th day of March, 1954, when said case against petitioner was called for trial and before the presentation of evidence, petitioner presented her said plea in abatement and after argument by counsel for City of Baxley and petitioner, the Court passed an order over-

ruling said plea in abatement on all of the grounds therein stated. Petitioner then and there excepted and assigned said order overruling said plea in abatement, as error, and here and now assigns the same as error.

6. After the overruling of said plea in abatement, said case preceeded to trial under petitioner's plea of not guilty, evidence was introduced in behalf of said City of Baxley and petitioner made a statement in her own behalf. The evidence introduced and the statements made were reported and transcribed in detail in question and answer form, which transcript of the evidence has been reduced to its narrative form and is hereto attached, marked Exhibit 4, and hereby made a part of this petition and paragraph.

7. After argument of counsel for City of Baxley and petitioner, the case was submitted to Honorable J. M. Dunn, Mayor, who thereupon returned his judgment in words and figures as follows:

"Plea of not guilty. Judgment $300 or 30 days confinement in City jail.

J. M. Dunn
3-15-54 Mayor and Ex-Officio Recorder"

8. Thereupon, on the 15th day of March, 1954, petitioner presented her bond as provided in Georgia Code Section 19-214 for the purpose of obtaining an order of supersedeas to the Clerk of said Mayor's Court of said City of Baxley, [fol. 14] same was attested, accepted and approved by said Clerk, copy of which, with attestation, acceptance and approval, being hereto attached, marked Exhibit 5, and hereby referred to and made a part of this petition and paragraph; said Clerk certified that said supersedeas bond had been filed, approved and accepted by said Clerk on the 15th day of March, 1954, the original certificate being hereto attached, marked Exhibit 6, and hereby referred to and made a part of this petition and paragraph; said Clerk thereupon issued an order of supersedeas on the 15th day of March, 1954, directed to Wilton A. Schuman, Chief of Police of said City of Baxley, copy of said order of supersedeas being hereto attached, marked Exhibit 7, and hereby referred to and made a part of this paragraph and petition.

9. Petitioner comes now after having complied with the law in such cases and presents this her petition for certiorari within thirty days from the final determination of said cause.

Your petitioner specifically assigns error as follows:

A. Petitioner excepts to the order of the Court, dated March 15, 1954, overruling petitioner's plea in abatement. Petitioner did then and there except to said order and now assigns the same as error for the reason that the same is contrary to law, and for the further reason that the evidence as to the contents of said ordinance was uncontridicted and petitioner's plea in abatement should have been sustained on each and every ground and the case against petitioner dismissed.

B. Petitioner excepts to the judgment of the Court, dated March 15, 1954, convicting petitioner. Petitioner did then [fol. 15] and there except to said judgment and now assigns the same as error for and on the following reasons and grounds:

(1) Said judgment is contrary to law.

(2) Said judgment is without evidence to support same.

(3) Said judgment is contrary to the principles of justice and equity.

(4) Because the ordinance, the violation of which petitioner was charged and convicted, was and is unconstitutional and unreasonable, null and void for all of the following reasons and grounds, all of which reasons and grounds were made and urged before the Honorable J. M. Dunn, Mayor, upon the trial of petitioner's case in the Mayor's Court of the City of Baxley, Appling County, Georgia, on the 15th day of March, 1954.

(a) Said ordinance with which petitioner is charged to have violated shows on its face that it is repugnant to and violative of the 1st and 14th amendments to the Constitution of the United States in that it places condition precedent upon, and otherwise unlawfully restricts the petitioner's freedom of speech as well as freedom of the press and freedom of lawfull assembly. Petitioner shows that the

right to engage in organizing labor unions is an inherent constitutional right consisting of soliciting members by pointing out to workers the advantages of belonging to labor unions, such solicitation being done by word of mouth, by pamphlets or other publications and by holding meetings of those desirous of being informed of the facts about labor unions. Petitioner shows that such acts are restricted and limited by said ordinance so as to place a condition precedent, by way of payment of a license fee, on the privilege of engaging in the constitutional rights of free speech, [fol. 16] free press and free assembly.

(b) Said ordinance is repugnant to and violative of Section 7 of the National Labor Relations Act, as amended, and trends to contravene said act and the public policy of the United States as contained in said Act by establishing unwarranted conditions upon the right of petitioner to participate in the labor activities secured by the National Labor Relations Act, as amended, and the public policy of the United States. Thus the ordinance which interferes with such rights is in direct conflict with superior Federal legislation and is therefore unconstitutional, null and void.

(c) Said ordinance is not a valid ordinance in that it denies equal protection of the laws to petitioner and others like petitioner in that said ordinance, which requires the payment of large sums of money, is founded upon an unreasonable and invalid classification of persons which must pay the confiscatory fee which is set out in the ordinance. Said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization. Such classification is not a reasonable classification for imposing the payment of a fee upon petitioner and other similarly situated.

(d) Said ordinance is invalid in that it shows on its face that it is a regulatory measure imposing a flat tax upon a privilege which is excessive in amount. The sums of money charged under said ordinance are of such amount as to be wholly unreasonable, confiscatory and prohibitory. The amounts of money charged in said ordinance are so large [fol. 17] that it could not reasonably be paid by anyone

desiring to organize any sort of organization and therefore exist solely to prevent and deprive petitioner and others like petitioner from organizing members in their organizations and exercising rights previously herein set out. The ordinance shows on its face that it is patently a device intended to prevent organization within the city limits in behalf of labor unions. It is a well known fact this day and time that labor unions constitute the vest majority of organizations which send paid representatives into communities for the purpose of organizing and soliciting membership. The above purposes are illegal and improper and are a misuse and abuse of the law-making powers of the defendant city, but nevertheless will be successful in depriving petitioner of her rights unless this Court declares said ordinance null and void.

(e) Said ordinance is an invalid regulation in that it leaves within the discretion of the Mayor and City Council, with no form of appeal or any objective or definitive standards, the refusal or granting of the license required.

(f) Said ordinance is void in that the same is repugnant to and violative of Article 1, Section - , paragraph 3 of the Constitution of the State of Georgia in that the same is not impartial but is unreasonable and arbitrary and contravenes said Section.

(g) Said ordinance is unconstitutional and void as violative of Article I, Section 1, paragraph 3, of the Constitution of Georgia in that petitioner is deprived of her liberty and property without due process of law.

[fol. 18] (i) Said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley, Georgia, but shows on its fact that it is unreasonable, confiscatory, prohibitory and discriminatory, and that it exists solely for the purpose of denying petitioner and others from engaging in a lawful occupation and that said ordinance is for the purpose of preventing the organization of labor unions within the city limits of Baxley, Georgia.

(j) Said ordinance is patently void in that the same is a misuse and abuse of the police power of the City of

Baxley, Georgia, in an effort to deprive petitioner and others similarly situated of their rights herein referred to through the subterfuge of a city ordinance.

Wherefore, the premises considered, petitioner prays for a writ of certiorari, directed to Honorable J. M. Dunn, Mayor and Judge as aforesaid, requiring him to certify and send up all the proceedings in said case to the next term of the Superior Court of Appling County, Georgia, to be held in and for said County on the 18th day of October, 1954, that the errors alleged to have been committed considered and corrected.

POOLE, PEARCE & HALL, WILSON & WILSON
By Leon A. Wilson II, Attorneys for Petitioner.

[fol. 19] EXHIBIT 1 TO PETITION

POLICE COURT Baxley, Ga., February 19, 1954

M. Rose Staub

You are hereby summoned to be and appear before the Police Court of said City at 7 o'clock P. M. on the 22 day of February, 1954, to answer to the offense of Soliciting Members for an Organization Without a Permit & License.

Herein fail not under penalty of Twenty-five Dollars.

Wilton A. Schuman, Chief of Police

[fol. 20] EXHIBIT 2 TO PETITION

"AN ORDINANCE TO REGULATE THE SOLICITATION OF MEMBERSHIP IN ORGANIZATIONS AMONG THE CITIZENS OF CITY OF BAXLEY: TO PROVIDE FOR PERMITS FOR PERSONS OR AGENTS SOLICITING SUCH MEMBERS: TO PROVIDE FOR LICENSE FEES AND FOR VIOLATION OF THIS ORDINANCE.

BE IT AND IT IS HEREBY ORDAINED BY MAYOR AND COUNCIL OF CITY OF BAXLEY AS FOLLOWS:

Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payments of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.

Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicants's character. Said application shall also furnish the information as to whether applicant is a salaried [fol. 21] employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in the event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which

members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

Section V. The granting or refusing to grant of such application for a permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

Section VI. In the event that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or received a [fol. 22] fee of any sort from the obtaining of such members, he shall be issured a permit and license for soliciting such members upon the payment of $2000.00 per year. Also $500.00 for each member obtained.

Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens of persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

Section VIII. All Ordinances of City of Baxley in conflict with ordinance are hereby repealed.

Section IX. Should any section or portion of this Ordinance be held void, it shall not affect the remaining sections and portions of same.

Duly adopted by Mayor and Council of City of Baxley in regular meeting duly assembled on the 17th day of Sept., 1949.

/s/ C. A. Whitaker, Mayor, /s/ J. H. Keels, Clerk."

Recorded in City of Baxley Minute Book 3, page 396.

[fol. 23] EXHIBIT 3 TO PETITION

GEORGIA: APPLING COUNTY:

City of Baxley

vs.

Rose Staub

In Police (Mayor's) Court, of the City of Baxley.

Soliciting members for an organization without a permit or license.

Now comes the defendant and files this her plea in abatement in the above stated case, and for grounds thereof, shows the following grounds, to-wit:

1. Defendant was arrested on February 19th, 1954, and charged with violation of an ordinance of the City of Baxley, and copy of which is hereto attached, marked exhibit "A" and hereby referred to for all purposes.

2. Defendant alleges that the prosecution of said case should be abated upon the ground that said ordinance is unconstitutional and void for the reasons hereinafter stated.

(a) Defendant shows that the ordinance with which she is charged to have violated shows on its face that it is repugnant to and violative of the 1st and 14th Amendments to the Consfitution of the United States in that it places a condition precedent upon, and otherwise; unlawfully restricts the defendant's freedom of speech as well as freedom of the press and freedom of lawful assembly. Defendant shows that the right to engage in organizing labor unions is an inherent constitutional right consisting of soliciting members by pointing out to workers the advantage of belonging to labor unions, such solicitation being done by word of mouth, by pamphlets or other publications and by holding meetings of those desirous to be informed of the facts about labor unions. Defendant shows that such [fol. 24] acts are restricted and limited by said ordinance

so as to place a condition precedent, by way of the payment of a license fee, or the privilege of engaging in the constitutional rights of free speech, free press and free assembly.

(b) Defendant shows that said ordinance is repugnant to and violative of Section 7 of the National Labor Relations Act, as amended, and tends to contravene said Act and the public policy of the United States as contained in said Act by establishing unwarranted conditions upon the right of defendant to participate in the labor activities secured by the National Labor Relations Act, as amended, and the public policy of the United States. Thus the ordinance which interferes with such rights is in direct conflict with superior Federal legislation and is therefore unconstitutional, null and void.

(c) Defendant shows that said ordinance is not a valid ordinance in that it denies equal protection of the laws to defendant and others like defendant in that said ordinance, which requires the payment of large sums of money, is founded upon an unreasonable and invalid classification of persons which must pay the confiscatory fee which is set out in the ordinance. Said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization. Such classification is not a reasonable classification for imposing the payment of a fee upon defendant and others similarly situated.

(d) Defendant shows that said ordinance is invalid in that it shows on its face that it is a regulatory measure [fol. 25] imposing a flat tax upon a privilege which is excessive in amount. The sums of money charged under said ordinance are of such amount as to be wholly unreasonable, confiscatory and prohibitory. The amounts of money charged in said ordinance are so large that it could not reasonably be paid by anyone desiring to organize any sort of organization and therefore exists solely to prevent and deprive defendant and others like defendant from organizing members in their organization and exercising rights previously herein set out. The ordinance shows on its face that it is patently a device intended to prevent organization within the city limits in behalf of labor unions.

It is a well known fact this day and time that labor unions constitute the vast majority of organizations which send paid representatives into communities for the purpose of organizing and soliciting membership. The above purposes are illegal and improper and is a misuse and abuse of the law-making powers of the plaintiff city, but nevertheless will be successful in depriving defendant of her rights unless this court declares said ordinance null and void.

(e) Defendant shows that said ordinance is an invalid regulating in that it leaves within the discretion of the Mayor and City Council, with no form of appeal or any objective or definitive standards; the refusal or granting of the license required.

(f) Defendant shows that said ordinance is void in that the same is repugnant to and violative of Article 1, Section 1, paragraph 3 of the Constitution of the State of Georgia in that the same is not impartial but is unreasonable and [fol. 26] arbitrary and contravenes said Section.

(g) Defendant shows that said ordinance is unconstitutional and void as violative of Article 1, Section 1, Paragraph 3 of the Constitution of Georgia in that defendant is deprived of her liberty and property without due process of law.

(h) Defendant shows that said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley, Georgia, but that said ordinance on its face shows that it is unreasonable, confiscatory, prohibitory and discriminatory, and that it exists solely for the purpose of depriving and denying defendant and others from engaging in a lawful occupation and that said ordinance is for the purpose of preventing the organization of labor unions within the city limits of Baxley, Georgia.

(i) Defendant avers that said ordinance is patently void in that the same is a misuse and abuse of the police power of the City of Baxley, Georgia, in an effort to deprive defendant and others like defendant of their rights herein referred to through the subterfuge of a city ordinance.

3. Defendant alleges that because of the aforesaid reasons said ordinance is unconstitutional and void, and should

be so declared by the court, and the action against defendant for violation thereof abated.

Wherefore, defendant prays that this her plea in abatement be sustained, and that she be discharged without costs from the aforesaid criminal charge.

Poole, Pearce & Hall, Wilson & Wilson, Attorneys for Defendant.

[fol. 30] EXHIBIT 4 TO PETITION

GEORGIA, APPLING COUNTY

IN MAYOR'S COURT OF CITY OF BAXLEY

CONVICTION FOR OFFENSE OF SOLICITING MEMBERS FOR AN ORGANIZATION WITHOUT A PERMIT AND LICENSE ON MARCH 15, 1954, AND SENTENCED TO 30 DAYS IMPRISONMENT OR A FINE OF $300.00.

CITY OF BAXLEY

VS.

MAMIE MERRITT AND ROSE STAUB

BRIEF OF THE EVIDENCE

W. A. Schuman was called as a witness in behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is W. A. Schuman, Chief of Police of the City of Baxley, Georgia. I was Chief of Police of the City of Baxley during February, 1954. I know the defendants, Rose Staub and Mamie Merritt. I saw each of these defendants in Baxley, Georgia during February of this year. The date

was the 19th of February. The first time I saw them they were at the Baxley Motor Court and we tried to contact them there but we didn't get them until they went to the Mimosa Restaurant to have dinner. I talked with Rose Staub. She told me what she was doing in the City of Baxley at that time. At first she denied it, but then she showed me her card from the International Ladies Garment Workers' Union and then told me what she was doing—both of them. She said she was employed by that organization. Both of them said they were soliciting members for that organization in Baxley. By both of them I mean [fol. 31] Rose Staub and Mamie Merritt. (It is stipulated by counsel for the City of Baxley and the defendants that the International Ladies Garment Workers' Union is a union that requires dues of its members.) I asked them if they had a permit as required by an ordinance of the City of Baxley dated September 17, 1949, and recorded in Minute Book Number 3, page 396. They said they had no permit or hadn't made any application for it. All of that was in the City of Baxley, Appling County, Georgia, during February of this year.

Cross examination.

Rose Staub and Mamie Merritt stated that they were going around talking to some of the women to organize the factory workers, or something to that effect. They didn't exactly use the word "solicit," but to gain membership and gather members for it and hold meetings with them for that purpose. I did not understand that they were collecting money for members at that time from my conversation with them. They were trying a preliminary organization, but they didn't tell me they were. Indirectly and directly, I don't know of my own knowledge whether they ever solicited any member or obtained any funds for membership or signed anyone for membership in this union. I didn't see them solicit any members. I have never had anyone apply for this permit or license to solicit members for an organization in the City of Baxley since I have been Chief. I have been Chief since February 1 of this year. I don't know the amount of any license paid by any business or organization to the City of Baxley of my own knowledge.

Louise Bowyer was thereupon called as a witness in behalf of the City of Baxley, and having been duly sworn, [fol. 32] testified as follows:

Direct examination.

I live in the City of Baxley on Jones Street. I recognize the defendants, Rose Staub and Mamie Merritt. I first saw them when they came to my house the first of the week before the 19th on Monday and Tuesday. That was before February 19, 1954, on Monday of that same week, at my house in the City of Baxley. I had not seen them before that time. I did not know either of them. I hadn't contacted either of them by writing or correspondence of any sort or telephone or in any manner prior to that time. I did not know they were coming to my house. They said they were trying to get people to join the union. They did not show me a membership card that time. I had a later meeting with them over at Mrs. Catherine Taylor's. She lived in the housing project in the City of Baxley and the meeting I was speaking of was with them in the City of Baxley. There were four of us besides the two ladies. They were Rebecca Stone and Sylvia Dixon and Mrs. Catherine Taylor. At that time each of these defendants, Rose Staub and Mamie Merritt, said they were interested in trying to get some more girls from Hazlehurst to join up with them —with the union. We all work in Hazlehurst. The others present and I work in Hazlehurst now. We live in Baxley. They stated that they wanted more girls from Hazlehurst to join the union—wanted us to get more. They said they would leave some cards with us. They said the dues would be sixty-four cents a week. They did not state how much we were to pay before we became a member. It would be sixty-four cents a week, they said, and our top pay would be ninety-two or ninety-three cents an hour, is what our pay would be if we joined the union. I don't remember if [fol. 33] they told us what we would pay a week in advance. We were to pay sixty-four cents a week. They made some statement about a card or our obtaining a card. They said we could get a card and get more to give to the others. They were going to give us a card if we wanted to join the union. They said we didn't have to sign our names. We

could make an "X" and the ones we worked for would never know that we joined. They said they would give us the card upon our signing that way. All of that was in the City of Baxley. Each of the defendants did state that they wanted us to join the union and they had the cards.

Cross examination.

I do not have any of the cards that they said they would leave with us. We didn't accept any cards. I did not read one of them. I don't know what those cards said. I didn't see the cards. I wasn't interested in it. The first time that I saw them, Mrs. Taylor was on my porch with me. The next time I saw them was at Mrs. Taylor's house. They parked their car in my yard and went over to Mrs. Taylor's. I went over there, too. I was interested enough in it to go over there, but I wasn't interested enough in it to read the cards. Rose Staub and Mamie Merritt did not ask me for any money at all. They did not try to get me to pay any money. She did not ask me to sign one of the cards she was talking about. She said she would leave us cards to get signed. She said I could sign them if I wanted to, but she didn't attempt to have me sign one. She didn't attempt to have any of the other girls to sign one in my presence that I know of. I didn't see any money. I don't think it was necessary for us to sign these cards before anyone would come down here to ask us to join the union. [fol. 34] I don't think that is what she explained to us. She was explaining it to us then. She just told us how much would be taken out of our pay each week if we joined the union. She said we could join the union if we wanted to and she wanted us to get other girls from up there to join the union. She didn't ask me to join the union. She said all of us.

Redirect examination.

I reckon all of us included me. I was there. That was the purpose of the meeting—to get us all to join the union, as they stated. I was there. They said they had these cards there. They were membership cards, that's what they were.

Recross examination.

She explained the union to us that she was working for, and she said wanted us to get more of the girls from up there to join with us if we did to put that over. She wanted to give us cards for us to go get somebody to join the union. She said she would leave cards there, but she didn't leave any cards. She didn't ask me directly to sign a card or join the union.

Redirect examination.

When I said she asked all of us, that was all of us present. We were all there. We all refused and after that she didn't leave the cards. There wasn't any cards left.

Recross examination.

If she asked any of them in my presence to join the union, she asked them separately. She didn't me. She didn't in front of me that I know of. I don't know.

CATHERINE TAYLOR was thereupon called as a witness in [fol. 35] behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is Catherine Taylor. I am married. I live at 501 Speer Home in the City of Baxley, Georgia. I know the defendants, Rose Staub and Mamie Merritt. I saw them on Monday, February 15th of this year. I had never saw them before until that day. They did not come to my house. They stopped at Louise Bowyer's out in the road and asked me where Lou-se Bowyer lived, and I told them where she was. They came and knocked on the door at the Speer Home for a lady who works for Miller at the shirt factory. I saw them. Then they got back in their car and pulled over to Louise Bowyer's yard. I had not seen them prior to that time. I didn't request them to come there. I never saw them before. I was present part of the time when they talked with Louise at Louise Bowyer's house. Later they

met with me and several other ladies at my house. That was on Friday following Monday. I was very interested in the union if they would sign me a paper saying that they would put the lady next to me out if she didn't go to the union, and she told me she would; that she wouldn't be afraid to sign a paper saying that. They had requested that we hold a meeting at my house. They stated that the purpose of the meeting was for getting members for the union. They asked me to get others together. I got four others to meet at my house and Rose Staub and Mamie Merritt met with us over there. They asked me to become a member of the union. I stated that if they would sign me a paper saying that they would put the girl next to me out [fol. 36] if she didn't go union; that I would sign the union and help them to get more members to join, and she told me she would. That was Rose Staub talking. She left my house around twelve or maybe one in the day; and she told me she was most positive that she could sign the paper; that she wasn't afraid in the least bit, but she would call her boss and come back at three and bring the paper to me. At that meeting they told us the dues would be sixty-four cents a week. They stated that they were to be paid four weeks in advance if we joined. They said they had membership cards there. They offered to give us membership cards upon payment of the amount stated. She said she would leave the cards, and I told her that is she would sign the paper I would be willing to take the cards. Both of them asked me to become a member of the union for which they were working. I saw her again later. She came back. Both of the defendants, Rose and Mamie, were there. She told me she couldn't sign the paper, but she told me that if I had enough girls there at seven o'clock that night she would like to have a meeting. We didn't have another meeting. I called and ask her if she could come. I called Rose and asked her if she could come, and she said the law had got after her. We did not join the union. I would not join after she didn't do what she said she would do. She did not leave the cards after we refused [fol. 37] to join. That all took place during February of this year in the City of Baxley.

Cross examination.

I saw these parties three times altogether. On the first occasion Louise Bowyer was with me. These four were with me on the second occasion. No one was with me on the third occasion but just me and my daughter. They asked me to join the union in my house. That was at the meeting where all of us met together. She told us all about the union on Monday, and said that she would like for us all to join the union; that she would be back to explain it later to us. She specifically asked me to sign a membership card, but I held her off with the paper. She did not ask me to pay any dues at that time, because I didn't go that far with it. She told us she would leave a good many cards with us, but I didn't see the cards. The cards she was to leave with us were for us all to get other members. We agreed to do that under certain circumstances—that is, her signing the paper. I didn't want to pay union fees and the girl next to me didn't pay them. I didn't sign a card or give them any money. Both of them asked me to join the union. They just told us they wanted us to join the union, and said it would be a good thing for us to do—to join the union, and went on to tell us how this union would help us. She told us she wanted us to join the union then, but I held her off on signing the paper. It was in the room there with all of us. Mrs. Bowyer had stepped out several times to see about her kids, but she was in there most of the time. It was a general discussion. She didn't just ask us one time, because I was willing to join the union if she would sign my paper. I couldn't tell positively [fol. 38] if she asked us at the time Louise Bowyer was in the room. I work over in Hazlehurst. I don't work in Baxley. I definitely did not call these parties on one occasion. I called them about the last time to come—the last time they were to come at seven, and I did call them at seven. I called them and asked them if they were coming. I didn't know about them being in trouble in any way. I didn't know about that. I definitely did not make any complaint to the police. I do not know who did that.

SYLVIA DIXON was thereupon called as a witness in behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is Sylvia Dixon. I live at 101 West Park Avenue. I don't work. I stay at home. I know the two defendants in this case. The first time I saw them was on Friday, the 19th, when I saw them from the Morrelton Cafe, and then I saw them at Mrs. Taylor's later in the day, around noon time. That was in the City of Baxley at Mrs. Catherine Taylor's. The defendants said that the purpose of meeting with us at Mrs. Taylor's was to organize a union here in Baxley and Hazlehurst. They asked those present to join the union. They told us that the dues would be sixty-four cents a week. They stated they had membership cards. They offered us cards. They offered us to sign a card that they would take and send in and we would be a member and we would not have to sign our names so our boss and the company that we might be working for would know that we were members until we could hold a meeting and overthrow—take over the union up there; and as soon as they could get forty per cent they could go in the factory [fol. 39] up there and they could then force the union on the rest of the members, or the rest of the workers, rather. That was what they told us.

Cross examination.

I didn't ever communicate with these parties over the telephone. There was other conversations with them besides what I have just mentioned at this meeting at Mrs. Taylor's. It was concerning the union and getting members. They wanted us to join so if they ever got forty per cent of the workers' in the factory names on those cards they could take over from there. I didn't see the cards. I didn't ask to read one of them. I haven't worked this year. I worked until Christmas. I was interested in knowing what the union would mean to the workers. They conducted themselves in a proper manner to be organizing a union.

* * * * * * *

[fol. 41] Lois Taylor Sharp was thereupon called as a witness in behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is Lois Taylor Sharp. I have been Clerk of the City Council since February 2, 1953. Neither Rose Staub nor Mamie Merritt have made application for a permit as required by an ordinance passed by the city of Baxley dated September 17, 1945, recorded in Minute Book Number 3, page 396, of the minutes of the City of Baxley since I have been Clerk. I keep the records of the City of Baxley. No permit has been issued to either of these parties; no application filed according to my record.

Cross examination.

I have never had anyone ask for a permit or a license to solicit members for an organization since I have been Clerk. I have a schedule of licenses that are charged by the City of Baxley for various businesses. The amount of yearly license required for automobile accessories, wholesale and retail, is $100. $150 is the amount charged a bank or banker. For a billiard or pool room, the first table is $100, and $10 each additional table. The book or magazine agent is charged $10 per day. $2 per day is charged for a bill [fol. 42] poster and bill cards, and sample advertising matter. $50 is charged for a cafe or restaurant. A carnival tent show is charged $100 per day with the consent of the Mayor and Council. The amount charged to merchants with general and specific stock is broken down into terms of merchandise and it is based on inventory. $150 is charged from $10,000 to $20,000. $100 is charged from $5,000 to $10,000. The regular moving picture show is charged $200 per year.

The Defendant, Rose Staub, thereupon made the following statement:

Well, to start with at the very beginning, to begin with I told the Chief of Police nothing—absolutely nothing. Whatever was said he asked me and I answered it. And

we were riding along the street one day, and these two women here—Mrs. Bowyer and the other one—happened to be on the porch. And we started to talk to them and asked them if they worked at Hazlehurst, and they came over to the car on the street, and I started to talk to them and asked them if they worked there, and they said, "Yes," and I says, "Do you ever hear anything about a union here?" And they said, "No." And Mrs. Taylor, she left and the other lady, we stood talking to her a while, and we pulled away, and we said we would see them again sometime; so the second time, why—that was the second time. This woman over here told about seeing us at the cafe. Mrs. Horne, of the tourist court—we could have got her for a witness, but we thought probably we didn't need her; but she had a call from Mrs. Taylor in the morning and she mentioned her name, who she was, and she said she would like to have us come to her house and she would like to talk to us, and I said, "All right, you tell her that we will be around a little later." This was eight o'clock [fol. 43] in the morning, after we had breakfast, or they could come over to the cabin if they liked, and she said no, to come to her house; so we went and had breakfast and went across the street. This lady here—what's her name? Mrs. Dixon was with her—they were sitting in the car, and I talked to them, and they said, "We are waiting for someone." They said, "We will se- you around at Mrs. Taylor's." I said, "All right." So we drove around, and as we did Mrs. Taylor come along the street. We were still on the street at that time. And she says, "Come on and come in my house. We would like to talk to you." And Mrs. Bowyer was with her. So the four ladies came inside and they said they wanted for me to explain about the union; so I explained to them what I knew—what I could tell them about it. So it is true that Mrs. Taylor said, "Could you make a statement or give us a written statement that is we won the election in this shop what we would do with these other people if they didn't want to join the union?" I said, "Georgia has a law and they don't allow you to force people into it, but we don't have too much trouble about it," I said, "after the shop is once union." So she said, "I can get you at least fifteen people

here to sign cards and we can get the union in, I am sure, and I can bring them here. I'm going down for my pay today and I'm going to speak to some of these girls and I will have them here for a meeting tonight for you." I said, "All right. We will come around later." And as far as the sixty-three cents, we told them then that the union must be in before they ever start paying. I said, "I expect to leave town. I don't expect to be here. I'm only here on an investigation, and, I said, "I will leave cards with you and you get your people to sign and I will call [fol. 44] back." About signing the cards with an "X", one of the girls said, "Well, what would you do if you can't write?" I said, "If you can't write you can put an "X" to the card." And I never would say to anybody, "Just sign an "X". I said that we keep it a secret until we have enough cards signed to petition for an election, which was about forty per cent of the shop. It is necessary to prove signatures and authenticity of the cards; with the Labor Board that is necessary. Of course, the Labor Board is not interested in the card, they are only interested in the amount of cards signed, and you must have forty per cent. of the factory before you can petition for an election.

[fol. 45] Introduced in evidence by the defendants, without objection, the ordinance of the City of Baxley, as it appears on the original minute book, under which said charges were brought, and designated herein as Defendant's Exhibit A.

THE DEFENDANTS REST.

THE CITY OF BAXLEY CLOSES.

THE DEFENDANTS CLOSE.

[fol. 51] IN SUPERIOR COURT OF APPLING COUNTY, GEORGIA.

[TITLE OMITTED]

ANSWER TO PETITION FOR CERTIORARI—Filed October 11, 1954

Now comes J. M. Dunn, Mayor of the City of Baxley, and in answer to the writ of certiorari issued in the above stated matter, files this his answer and shows:

1. The allegations of paragraphs 1, 2 and 3 and the exhibits referred to in said paragraphs, marked exhibit 1 and exhibit 2 are correct.

2. Answering paragraph 4 it is stated that petitioner filed a plea in abatement, correct copy of which is attached to her petition, referred to in paragraph 4 of the petition as exhibit 3.

3. The allegations contained in paragraphs 5, 6 and 7 are correct.

4. Answering the 8th paragraph it is admitted that the bond attached to petitioner's petition, marked exhibit 5, on March 15, 1954, was presented to, filed with and approved by Mrs. Lois T. Sharpe, Clerk of City Council of the City of Baxley, who signed the certificate marked exhibit 6 attached to petitioner's petition and issued the order of supersedeas, marked exhibit 7, and attached to petitioner's petition. Although the said Mrs. Lois T. Sharpe signed the approval on the bond, certificate, and order of supersedeas, the instruments having been prepared for signature by attorney for the petitioner, above the typewritten words "Clerk Police (Mayor's) Court of City of Baxley, Appling County, Georgia", the said Mrs. Lois T. Sharpe is in fact Clerk of the City Council of the City [fol. 52] of Baxley and not Clerk of the Mayor's Court of the City of Baxley, Mayor's Court being also known as Police Court, the municipal court in which petitioner was convicted, the said Mayor's Court not then and not now having a Clerk.

5. Answering paragraph 9 it is denied that the judgment is contrary to law or that the ordinance is invalid or void for any of the reasons stated therein or for any other reason.

6. Further answering said writ and in compliance therewith, the undersigned adopts as a part of this answer exhibits 1, 2, 3, 4, 5, 6, 7, and the copy of the judgment rendered as stated in paragraph 7 as the proceedings in this case, and same by reference are incorporated herein as a part hereof. With reference to exhibits 5, 6, and 7

where the designation of Mrs. Lois T. Sharpe as Clerk of Police (Mayor's) Court of City of Baxley, Appling County, Georgia, appears in said exhibits following her signature, such designations are in error as Mayor's Court of City of Baxley does not have and has not had a Clerk, and there is no police court other than the Mayor's Court.

Respectfully Submitted

J. M. Dunn, Mayor, City of Baxley, Georgia

[fol. 54] In Superior Court of Appling County

[Title Omitted]

Exception and Traverse to Answer—
Filed October 20, 1954

Now comes the plaintiff in certiorari, Rose Staub, as provided in Code Section 19-302, and excepts to the answer filed and traverses the truth of the answer as follows:

1. Paragraphs 4 and 6 of the answer allege that Mrs. Lois T. Sharpe, who, as Clerk of the Mayor's Court of the City of Baxley, accepted, attested, approved and filed the supersedeas bond attached to plaintiff's petition as Exhibit 5, who, as Clerk of the Mayor's Court of the City of Baxley, executed her certificate that said supersedeas bond had been approved, accepted and filed, said certificate attached to plaintiff's petition as Exhibit 6, and, who, as Clerk of the Mayor's Court of the City of Baxley, issued an order of supersedeas, attached to plaintiff's petition as Exhibit 7, was not in fact the Clerk of the Mayor's Court of the City of Baxley, but was Clerk of the City Counsel for the City of Baxley, and that said Mayor's Court of the City of Baxley in fact had no Clerk. These allegations are excepted to, and the truth thereof traversed, upon the following facts, to-wit:

A. Counsel for plaintiff in certiorari, Leon A. Wilson II, upon arriving with plaintiff at the City Hall of the City of Baxley on March 15, 1954, at the time and place desig-

nated in the summons for the trial of the case herein certioraried, inquired of Honorable J. H. Highsmith, City Attorney and counsel for record for the City of Baxley in said case, and in the presence of Honorable J. M. Dunn, [fol. 55] Mayor and presiding magistrate of said Mayor's Court of the City of Baxley in said Case, Mrs. Lois T. Sharp- and plaintiff in certiorari, whether or not there was a clerk of said Mayor's Court of the City of Baxley. In answer to said inquiry, and in the presence of said Honorable J. M. Dunn, Mrs. Lois T. Sharp- and plaintiff in certiorari, the said Honorable J. H. Highsmith stated to counsel for plaintiff in certiorari that Mrs. Lois T. Sharpe was the Clerk of the Mayor's Court of the City of Baxley, there being no denial thereof by the said Honorable J. M. Dunn, Mrs. Lois T. Sharpe, or any other person at said time and place.

B. As a result of the statements and representations and in reliance thereon by said Honorable J. H. Highsmith to Counsel for plaintiff in certiorari, the latter filed with Mrs. Lois T. Sharpe plaintiff's plea in abatement to said summons, and the said Mrs. Lois T. Sharpe marked the same filed, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk. Immediately after the completion of said trial, having previously prepared the necessary papers and documents, counsel for plaintiff in certiorari presented to the said Mrs. Lois T. Sharpe, plaintiff's bond for the purpose of obtaining an order of supersedeas, and said bond was accepted, attested, approved and filed by the said Mrs. Lois T. Sharpe, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk. The said Mrs. Lois T. Sharpe thereupon executed her certificate, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk, that said supersedeas bond had been filed, approved, and accepted by her as such Clerk, and also [fol. 56] issued an order of supersedeas, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk, all in the case herein certioraried and all in the presence of the said Honorable

J. H. Highsmith, Honorable J. M. Dunn and plaintiff in certiorari.

C. That counsel for plaintiff in certiorari, not knowing that there was a clerk of the said Mayor's Court of the City of Baxley had prepared the supersedeas bond, certificate and order of supersedeas to be filed, attested, approved and/or executed by the Honorable J. M. Dunn, as Judge of the Mayor's Court of the City of Baxley, and, because of the aforesaid statements and representations made to him, changed the designation thereon from the Judge to Clerk of said Court.

D. That Mrs. Lois T. Sharpe was present at all stages of trial of case herein certioraried, had custody of all of the books of record of said Police (Mayor's) Court of the City of Baxley, accepted, attested, approved and filed the aforesaid papers and documents in said case, and in all ways and means acted as the assumed and executed the duties of Clerk of said Court, and signed her name upon the aforesaid papers and documents in said case over the written words, "Clerk Police (Mayor's) Court of City of Baxley, Appling County, Georgia."

E. That all of the aforesaid acts and doings of the said Mrs. Lois T. Sharpe was in the presence of the said Honorable J. H. Highsmith, Honorable J. M. Dunn, and plaintiff in certiorari, who at all times acquiesced in and ratified her said acts and doings as Clerk of the Mayor's Court of the City of Baxley, and who at all times had knowledge of her acts and doings. The aforesaid acts and [fol. 57] doings of the said Mrs. Lois T. Sharpe were at all times under the direct supervision of and according to the directions given her by the said Honorable J. H. Highsmith and Honorable J. M. Dunn, acting in their official capacity as hereinbefore stated.

F. That counsel for plaintiff in certiorari and plaintiff in certiorari, herself, had no other means and opportunity to ascertain whether Mrs. Lois T. Sharpe was or was not the Clerk of the Mayor's Court of the City of Baxley, or whether said court had a Clerk or not, other than by inquiry of the officials of said Court and City of Baxley, and plain-

tiff in certiorari and her counsel had the right to rely upon the statements and representations made to them by the said Honorable J. H. Highsmith, Honorable J. M. Dunn and Mrs. Lois T. Sharpe to the effect that the latter was the Clerk of the Mayor's Court of the City of Baxley.

G. That said Honorable J. M. Dunn, the City of Baxley and the Counsel thereof should not, in good conscious and equity, be heard or allowed to take advantage of any defect in these proceedings growing out of the question of whether or not the said Mrs. Lois T. Sharpe is Clerk of the Mayor's Court of the City of Baxley, which defect, if any there is, is and was the result of their own making and a result of the misrepresentations of fact as aforesaid, acted upon and relied upon by plaintiff in certiorari and her counsel of record, so as to deprive plaintiff in certiorari of her rights of appeal and review of said case. That if it is ascertained that the said Mrs. Lois T. Sharpe is indeed not the Clerk of the Mayor's Court of the City of Baxley and that there is no clerk thereof, because of the facts hereinabove shown, she should be considered and held to be the [fol. 58] Clerk of said court for the purposes of this proceeding, in order to prevent a wrong and a fraud from being perpetrated upon plaintiff in certiorari in this case, depriving her valuable rights therein.

H. The statements of Honorable J. H. Highsmith, and the acts and doings of Mrs. Lois T. Sharpe, Honorable J. M. Dunn, and all other persons connected with the trial of said case herein certioraried was a fraud upon plaintiff in certiorari and upon her counsel of record, insofar as such statements, representations and acts and doings treated and represented Mrs. Lois T. Sharpe as the Clerk of the Mayor's Court of the City of Baxley.

Wherefore, plaintiff in certiorari prays that said exceptions sustained and that Honorable J. M. Dunn, Mayor and Magistrate of the Mayor's Court of the City of Baxley, be required to make more complete answer in the particulars mentioned, and that, for the purposes of this proceeding, because of the facts hereinabove shown, it be adjudged

and determined that Mrs. Lois T. Sharpe is the Clerk of said Mayor's Court of the City of Baxley.

Wilson & Wilson, Attorneys for Plaintiff in Certiorari.

GEORGIA, WARE COUNTY

Personally appeared before the undersigned, Leon A. Wilson, II, who on oath says that he is of counsel for plaintiff, that the facts alleged in the foregoing answer and traverse and exceptions come peculiarly within his knowledge and not that of plaintiff and that the statements con-
[fol. 59] tained therein are true.

Leon A. Wilson II

Sworn to and subscribed before me this 18th day of October, 1954.

Marion C. Pritchard, Notary Public, Ware County, Ga.

[File endorsement omitted]

[fol. 61] IN THE SUPERIOR COURT OF *Baxley* COUNTY

FINDING FOR RESPONDENT—November 13, 1954

After hearing evidence on within exceptions and traverse, I find against the exceptions and traverse.

This November 13, 1954.

Douglas F. Thomas, Judge Superior Court, Appling County, Georgia.

[File endorsement omitted]

[fol. 62] IN THE SUPERIOR COURT OF APPLING COUNTY

ROSE STAUB

v.

CITY OF BAXLEY

JUDGMENT—December 10, 1955

The foregoing matter coming on to be heard during the October Term, 1955, of this court, and it appearing that the judgment of this court formerly rendered dismissing the petition for certiorari was reversed by the Court of Appeals of this State by judgment dated March 17, 1955, said court holding that the petition should be considered upon its merits, and said judgment of the Court of Appeals having been made the judgment of this court, and said matter being heard upon the issues involved,

IT IS ORDERED, that the petition for certiorari be, and the same is hereby, overruled and the judgment of the court below sustained.

IT IS FURTHER ORDERED, that the defendant in certiorari have of and recover from plaintiff in certiorari, as principal, and United States Fidelity & Guaranty Company, as surety, the sum of Three Hundred ($300.00) Dollars principal, with interest thereon at the rate of 7% per annum from March 14, 1954, and $..... cost.

SO ORDERED, this 10th day of December, 1955.

Douglas F. Thomas, Judge Superior Court, Appling County, Georgia.

Filed in Office this 10th day of December, 1955.

W. M. Moody, Clerk Superior Court, Appling County, Georgia.

[fol. 63] IN THE SUPERIOR COURT OF APPLING COUNTY

CITY OF BAXLEY

v.

ROSE STAUB

JUDGMENT ON REMITTITUR—December 10, 1955

The above-stated case having been carried to the Court of Appeals of Georgia, by writ of error, and the said Court of Appeals of Georgia, at the March term, 1955, thereof, having reversed the decision of this court, on the trial of this case; it is on motion of counsel for plaintiff in error, ordered and decreed, that the said judgment of March 17, 1955, of said Court of Appeals of Georgia be entered on the minutes of this court, as the judgment of this court.

And it is further ordered, adjudged and decreed, that the said Rose Staub do have and recover of and from the said City of Baxley, defendant in error, the sum of $86.00 as her costs, expended in the defense and prosecution of the above-stated case.

This 10th day of December 1955.

Douglas F. Thomas, Judge of the Superior Court, Appling County, Georgia.

Leon A. Wilson II, Attorney for Plaintiff in Error.

[File endorsement omitted]

[fol. 66] IN THE COURT OF APPEALS OF GEORGIA

STAUB v. CITY OF BAXLEY

STATEMENT BY THE COURT

By the Court:

The trial court did not err in overruling the writ of certiorari.

Rose Staub, hereinafter called the defendant, was arrested for violation of an ordinance of the City of Baxley. Following the arrest of the defendant, she filed a petition for injunction in the Superior Court of Appling County, seeking to have the City of Baxley enjoined from proceeding with the prosecution, and seeking a declaratory judgment adjudging the ordinance void. The superior court refused to grant such relief. This judgment was affirmed by the Supreme Court with one Justice dissenting. See Staub v. Mayor & C. of Baxley, 211 Ga. 1 (83 S. E. 2d 606). The City of Baxley then proceeded with the prosecution, which resulted in conviction of the defendant in the Mayor's Court of the City of Baxley for violation of an ordinance of the City of Baxley. We will hereinafter refer to the City of Baxley as the plaintiff. The ordinance prohibited the solicitation of members for an organization without a permit and license. The defendant applied for and was granted a writ of certiorari, to which the mayor filed his answer. The defendant (plaintiff in certiorari), within the statutory time, filed her exceptions and traverse to said answer to the writ of certiorari. Counsel for both parties stipulated that all issues of fact and law should be submitted to and decided by the judge of the superior court, without the intervention of a jury.

[fol. 67] After the evidence had been submitted and argument had, the judge overruled such exceptions and traverse of the defendant (plaintiff in certiorari) to the answer of the judge to the writ of certiorari, and sustained the answer to the writ of certiorari, and dismissed the petition. The question presented to the Court of Appeals was whether or not a certiorari bond was properly signed. This court reversed the judgment of the trial court on this point, holding that the certiorari bond was properly signed, and

the case was returned to the trial court to be tried on its merits. (See Staub v. City of Baxley, 91 Ga. App. 650 (86 S. E. 2d 712). The case was so tried. The defendant again applied for the writ of certiorari, which was granted.

The Judge of the Superior Court of Appling County overruled the writ of certiorari and sustained the judgment of the Mayor's Court of the City of Baxley, thus convicting the defendant (plaintiff in certiorari) of a violation of the ordinance of the City of Baxley prohibiting the solicitation of members for an organization without a permit and license. It is to this judgment that error is assigned here.

For clarity we will quote the ordinance in its entirety:

[Omitted. Printed side page 9 ante]

[fol. 70] The writ of certiorari sets out that the said ordinance is repugnant to and violative of the First Amendment and Fourteenth Amendment to the Constitution of the United States; that such ordinance is repugnant to and violative to paragraph 8 of the National Labor Relations Act and tends to contravent said act and the public policy of the United States as contained in said act by establishing unwarranted conditions upon the right of the defendant to participate in the labor activities secured by the National Labor Relations Act and the public policy of the United States; that the ordinance was founded upon the unreasonable and invalid classification of persons who must pay the confiscatory fee set out in the ordinance; that said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization; that said ordinance is invalid, in that it shows on its face that it is a regulatory measure imposing an excessive tax upon a privilege; that the ordinance shows upon its face that it is a device intended to prevent formation of labor unions; that such ordinance is void in that it is repugnant to and violative of article I, §1, of the Constitution of the State of Georgia, in that it is not impartial but is unrea-[fol. 71] sonable and arbitrary, and that the petitioner is deprived of her liberty and property without due process of law; that same is a misuse and abuse of the public power of the City of Baxley by subterfuge, thus depriving the defendant and others of their rights.

The evidence submitted on the hearing is substantially as follows: W. A. Schuman, Chief of Police of the City of Baxley, testified that he talked with the defendant; that the defendant stated that she was a paid employee of a labor organization, and her duties were to solicit members for that organization; that one Mamie Merritt was also so employed; and that the defendant had no permit to solicit members and had made no application for a permit. On cross-examination the witness testified that he did not see the witness solicit any members. Recalled, the witness testified that he did not tell the defendant or Mamie Merritt to get out of town and stay out. On re-cross-examination he testified that he arrested the defendant and Mamie Merritt.

Louise Bowyer, a witness for the plaintiff, testified that she knew the defendant, and that the defendant and Mamie Merritt came to her home and stated that they were trying to get people to join the union. On cross-examination, the same witness stated that she did not see the union card; that neither the defendant nor Mamie Merritt asked the witness for any money; that the witness was not asked to sign a card; and that no membership cards were left with the witness.

Catherine Taylor testified on behalf of the plaintiff that the defendant and Mamie Merritt held a meeting at the home of the witness, and stated that the purpose of the [fol. 72] meeting was to get members for the union; that the defendant offered to give the witness a membership card upon the payment of 64 cents per week dues, payable 4 weeks in advance; and that the witness did not join and no cards were left.

Sylvia Dixon, a witness for the plaintiff, testified substantially that she went to a meeting where the defendant and Mamie Merritt were present and that she was asked by the defendant to join the union, and that membership cards were offered to the witness.

Lois Taylor Sharp, Clerk of the City Council and witness for the plaintiff, testified substantially that neither the defendant nor Mamie Merritt made application for a permit as covered by the ordinance, and that no permit had been issued to them. On cross-examination, the witness testified

that she had had no one ask for a permit or a license to solicit members for an organization. She testified that the license fee required for automobile accessories is $100; for a bank or banker $150; for a billiard or pool room $100 for the first table and $10 for each additional table; $10 for a magazine or book agent, etc. (We give these figures to show the comparative amounts assessed against these people and/or business in relation to the permit or license fee for soliciting members for an organization.

The defendant made the statement that she talked with several ladies about the union.

Opinion

Gardner, P. J. Counsel for the defendant excepts to the judgment of the court for the following reasons: (1, 2, 3). [fol. 73] The evidence is contrary to law, without evidence to support it; (4) "because the ordinance . . . was and is unconstitutional and unreasonable, null and void in that: (a) Said ordinance . . . shows on its face that it is repugnant to and violative of the First Amendment and the Fourteenth Amendment to the Constitution of the United States; (b) said ordinance is repugnant to and violative of section 7 of the National Labor Relations Act . . . ; (c) said ordinance is not a valid ordinance in that it denies equal protection of the law to petitioner and others . . . ; (d) said ordinance is invalid . . . .; (e) said ordinance is an invalid regulation in that it leaves within the discretion of the mayor, etc., the refusing or granting the license required; (f) said ordinance is void in that it is repugnant to and violative of Article I, Section I, paragraph 3 of the Constitution of the State of Georgia in that petitioner is deprived of her liberty without due process of law; (i) said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley but shows on its face that it is unreasonable; (j) said ordinance is patently void in that same is a misuse and abuse of the police powers, etc.

It will be noted that counsel for the defendant in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole. In Anthony v.

City of Atlanta, 66 Ga. App. 504, 505 (18 S. E. 2d 81), this court said: "It is well settled that one or more sections of an ordinance may be unconstitutional and other sec- [fol. 74] tions constitutional; and where the allegations as to the unconstitutionality of an ordinance fail to definitely state what section of the ordinance is unconstitutional, such allegations are too indefinite to raise any question for decision as to the unconstitutionality of the ordinance. Glover v. Rome, 173 Ga. 239 (160 S. E. 249), and cit."

It seems that the defendant made no effort to secure a license. Having made no effort to secure a license, the defendant is in no position to claim that any section of the ordinance is invalid or unconstitutional. See Campbell v. City of Thomasville, 6 Ga. App. 212 (18b), 64 S. E. 815), wherein this court said: "One who has been convicted of selling 'near beer' in violation of that ordinance, but who has made no application to the city council and has tendered no bond at all, is not in a position to complain of the illegality of the requirement that the sureties on the bond shall be freeholders. This provision being void, the presumption is that, if he had tendered a bond otherwise sufficient, the city council would have ignored the void provision and would have accepted the bond."

The cases cited by counsel for the defendant will be found to have identified the sections of the ordinance in question and are therefore not in point.

It affirmatively appears that the attack was not made against any particular section of the ordinance as being void or unconstitutional, and that the defendant has made no effort to comply with any section of the ordinance. This being true, it is not necessary to pass upon the sufficiency of the evidence, the constitutionality of the ordinance, or any other phase of the case as argued by counsel for the defendant except as hereinabove discussed. In addition [fol. 75] to the case cited hereinabove, see Taylor v. Flint, 35 Ga. 124(3), and Board of Education of Glynn County v. Mayor, of Brunswick, 72 Ga. 353.

The trial court did not err in overruling the writ of certiorari.

Judgment affirmed. Townsend and Carlisle, JJ., concur.

[fol. 76] IN THE COURT OF APPEALS OF GEORGIA

JUDGMENT—April 12, 1956

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered: Rose Staub v. City of Baxley.

This case came before this court upon a writ of error from the Superior court of Appling county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. Gardner, Townsend and Carlisle, JJ., concur.

[fol. 96] IN THE COURT OF APPEALS OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—May 15, 1956

The following order was passed: Rose Staub v. City of Baxley.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 98] SUPREME COURT OF THE STATE OF GEORGIA

NOTICE OF FILING PETITION FOR CERTIORARI—June 14, 1956

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day an application to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of Rose Staub v. City of Baxley.

K. C. Bleckley, Clerk Supreme Court of Georgia.

[fol. 99] IN THE SUPREME COURT OF GEORGIA

ORDER DENYING APPLICATION FOR WRIT OF CERTIORARI—July 11, 1956

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered: Rose Staub v. City of Baxley.

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur.

[fol. 100] IN THE COURT OF APPEALS OF THE STATE OF GEORGIA

Case No. 36161

ROSE STAUB, Plaintiff in Error

vs.

CITY OF BAXLEY, Defendant in Error

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed October 5, 1956

1. Notice is hereby given that Rose Staub, the plaintiff in error above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of Georgia, entered on April 12, 1956, a motion for rehearing thereof having been thereafter denied by said court on May 15, 1956. A petition for writ of certiorari to review said judgment was denied by the Supreme Court of Georgia on July 11, 1956. Said judgment of the Court of Appeals affirmed the judgment of the Superior Court, Appling County, Georgia, entered on December 10, 1955, which had affirmed the judgment of conviction of plaintiff in error, entered in the Mayor's Court of the City of Baxley, Appling County, Georgia, for violation of a municipal ordinance of the City of Baxley.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2). Plaintiff in error was convicted of violation of a municipal ordinance of the City of Baxley, Appling County, Georgia, entitled "An Ordinance To Regulate The Solicitation of Membership in Organizations Among The Citizens of City of Baxley: To provide for Permits For Persons Or Agents Soliciting Such Members: To Provide For License Fees And For Violation Of This Ordinance," adopted September 17, 1949, and appearing in minute book 3, page 396, of the City of Baxley; was sentenced to thirty days confinement in the City Jail or a fine of three hundred dollars; [fol. 101] and a supersedeas of the judgment of conviction was obtained by making bond in the sum of five hundred dollars.

II. The Clerk of the Court of Appeals of the State of Georgia has prepared a transcript of the record in this cause under date of August 17, 1956, which can be transmitted to the Clerk of the Supreme Court of the United States, and included in said transcript are the following:

A. Bill of exceptions.

B. The transcript of record comprised of the following:

1. Petition for certiorari subscribed and sworn to on April 10, 1954 to which are attached as exhibits (a) the summons, (b) the ordinance regulating the solicitation of membership in organizations among the citizens of the City of Baxley, (c) the plea in abatement in the Mayor's Court, (d) the testimony in the Mayor's Court in narrative form, (e) the bond made to obtain a supersedeas of judgment of conviction, (f) certification of approval and acceptance of the bond, and (g) command to the Chief of Police of the City of Baxley to cease further proceedings until further order.
2. Sanction.
3. Writ of certiorari dated April 10, 1954.
4. Answer of Mayor Dunn.
5. Exceptions and traverse to the answer and the order thereon entered on November 13, 1954.

6. Judgment of the Superior Court entered on December 10, 1955.
7. Judgment of the Superior Court on remittitur entered on December 10, 1955, and filed on December 23, 1955.

C. The opinion of the Court of Appeals of the State of Georgia of April 12, 1956.

[fol. 102] D. The judgment of the Court of Appeals of the State of Georgia entered on April 12, 1956.

E. Plaintiff in error's motion for rehearing filed on April 23, 1956.

F. Order denying motion for rehearing entered on May 15, 1956.

G. Plaintiff in error's notice of intention to apply to the Supreme Court of Georgia for writ of certiorari filed on May 22, 1956.

H. Notice of application to the Supreme Court of Georgia for a writ of certiorari to the Court of Appeals dated June 14, 1956.

I. Judgment of the Supreme Court of Georgia denying application for a writ of certiorari dated July 11, 1956.

In addition to the foregoing items, which are included in the transcript of record prepared by the Clerk of the Court of Appeals of the State of Georgia under date of August 17, 1956, which items are paginated 1 through 99, there should be added the following items to be included in the record to be transmitted to the Clerk of the United States Supreme Court:

A. This notice of appeal.

B. The petition for a writ of certiorari filed with the Supreme Court of Georgia.

III. The following questions are presented by this appeal:

A. Whether freedom of speech, freedom of press, and the right of peaceable assembly, guaranteed against state

infringement by the Fourteenth Amendment of the United States Constitution as it incorporates the First Amendment, are abridged by a municipal ordinance which provides as follows: (1) that, before a person, firm, or organization may solicit citizens of the municipality for membership in any organization requiring payment of membership fees or dues, such person, firm, or organization must first secure a permit from the Mayor and the City Council who may withhold or grant that permit in their discretion based on their consideration of "the character of the applicant, the [fol. 103] nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens" of the municipality; and (2) that, if the person desiring to solicit is a salaried employee or officer of the organization for which membership is sought, or receives a fee for obtaining members, such person shall, in addition to securing a permit, pay a license fee of $2,000 per year plus $500 for each member obtained.

B. whether the right of employees to organize and to select representatives of their own choosing for the purpose of collective bargaining and other mutual aid or protection, safeguarded by the Fourteenth Amendment of the United States Constitution against state deprivation without due process of law, is abridged by the aforesaid municipal ordinance in that (1) it prohibits solicitation of membership for an organization without a permit and that permit may be withheld by the Mayor and the City Council from any person, firm or organization thought by them in their uncontrolled discretion and without any standards to be unsuitable, and (2) it imposes a prohibitive tax on solicitation by a salaried employee or officer of the organization for which membership is sought or by a person receiving any fee for obtaining members.

C. Whether the aforesaid municipal ordinance denies the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution in that (1) it singles out for taxation those persons who are salaried employees or officers of the soliciting organization or who receive any fee for solicitation, leaving all others who have received a permit free to solicit without paying the tax,

and (2) it imposes a tax on solicitation grossly in excess of taxes imposed on purely commercial activity.

D. Whether the aforesaid municipal ordinance, in prohibiting in the manner described the solicitation of members without a permit and in taxing the solicitation of members, conflicts with Section 7 of the National Labor Relations Act which provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of [fol. 104] their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

E. Whether consideration by the Supreme Court of the United States of a challenge to the validity of a municipal ordinance on federal grounds, where the challenge is to the ordinance on its face, in its entirety, and the bases of its invalidity are fully particularized, may be precluded by the refusal of the state court to entertain the merits of the challenge for the asserted reason that it is procedurally defective in that (1) the "attack should have been made against specific sections of the ordinance and not against the ordinance as a whole", and (2) "no effort" was made "to comply with any section of the ordinance."

/s/ Morris P. Glushien, /s/ Leon A. Wilson, II.

Poole, Pearce & Hall, By /s/ Ed Pearce, By /s/ Margaret H. Fairleigh, Attorneys for Rose Staub, Plaintiff in Error.

1202 Candler Building, Atlanta 3, Georgia.

[fol. 105] Proof of Service (Omitted in printing)

[fol. 107] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—
January 14, 1957

APPEAL from the Court of Appeals of the State of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

FILE COPY

Office Supreme Court, U.S.
FILED
NOV 20 1956
JOHN T. FEY, Clerk

No. 602 48

IN THE

Supreme Court of the United States

October Term, 1956

ROSE STAUB, *Appellant*

v.

CITY OF BAXLEY, *Appellee*

On Appeal From the Court of Appeals of the State of Georgia

JURISDICTIONAL STATEMENT

MORRIS P. GLUSHIEN
1710 Broadway
New York 19, N. Y.

ED PEARCE
POOLE, PEARCE & HALL
1202 Candler Building
Atlanta 3, Georgia

BERNARD DUNAU
JAFFEE & DUNAU
912 Dupont Circle
Building, N. W.
Washington 6, D. C.

Attorneys for Appellant.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
The Statute Involved	3
Questions Presented	5
Statement	7
I. When and how the federal question were raised	7
II. The Facts	8
III. The disposition below of the federal questions	10
The Questions are Substantial	12
Conclusion	32
Appendix	33

Authorities Cited

Cases:

Amalgamated Utility Workers v. *Consolidated Edison Co.*, 309 U.S. 261 15
Angel v. *Bullington*, 330 U.S. 183 ..... 23, 31
Anthony v. *City of Atlanta*, 66 Ga. App. 504, 18 S.E. 2d 81 30
Atlanta Loan Co. v. *Peterson*, 181 Ga. 266, 182 S.E. 15 27
Braniff Airways v. *Nebraska State Board*, 347 U.S. 590 26
Broad River Power Co. v. *South Carolina*, 281 U.S. 537 31
Brown v. *Western Railway*, 338 U.S. 294 27
Campbell v. *City of Thomasville*, 6 Ga. App. 212, 64 S.E. 815 29
Cantwell v. *Connecticut*, 310 U.S. 296 13

Page

Chandler v. *City of Tifton*, 206 Ga. 43, 55 S.E. 2d 569 30
Davis v. *Wechster*, 263 U.S. 22 27
Demorest v. *City Bank Farmers Trust Co.* 321 U.S. 36 31
Denton v. *City of Carrollton*, 235 F. 2d 481 (C.A. 5) 22
Ellington Co. v. *City of Macon*, 177 Ga. 541, 170 S.E. 813 30
Enterprise Irrigation District v. *Farmers Mutual Canal Co.*, 243 U.S. 157 31
Euclid v. *Ambler Realty Co.*, 272 U.S. 365 24
Flynn v. *State*, 209 Ga. 519, 74 S.E. 2d. 461 27
Follett v. *McCormick*, 321 U.S. 573 15
Franklin v. *Harper*, 205 Ga. 779, 55 S.E. 2d 221 28
Grosjean v. *American Press Co.*, 297 U.S. 233 15
Hague v. *Committee For Industrial Organization*, 307 U.S. 496 13
Hale v. *Bimco Trading, Inc.*, 306 U.S. 375 18
Hill v. *Florida*, 325 U.S. 538 21
In re Porterfield, 28 Cal. 2d 91, 168 P.2d 706 ..16, 17, 18
International Union v. *O'Brien*, 339 U.S. 454 22
International Union v. *Wisconsin Employment Relations Board*, 336 U.S. 245 15
Jamison v. *Texas*, 318 U.S. 413 3
Jones v. *Opelika*, 319 U.S. 103 .....13, 15, 24, 25
Kirschbaum v. *Walling*, 316 U.S. 517 9
Kunz v. *New York*, 340 U.S. 290 14
Largent v. *Texas*, 318 U.S. 418 13
Lawrence v. *State Tax Commission*, 286 U.S. 276..3, 23, 26
Lovell v. *Griffin*, 303 U.S. 444 .....13, 23, 26
McGoldrick v. *Berwind-White Coal Mining Co.*, 309 U.S. 33 21
Miller v. *Head*, 186 Ga. 694, 198 S.E. 680 28
Murdock v. *Pennsylvania*, 319 U.S. 105 .....14, 17
N.L.R.B. v. *Babcock and Wilcox Company*, 351 U.S. 105 .....12, 20
N.L.R.B. v. *Hearst Publications*, 322 U.S. 111 21
N.L.R.B. v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 15
National Linen Service Corp. v. *Mayor of Milledgeville*, 51 Ga. App. 167, 179 S.E. 837 30
New York ex rel. Bryant v. *Zimmerman*, 278 U.S. 63 26
Niemotko v. *Maryland*, 340 U.S. 268 14

Page

Oregon Teamsters' Security Plan Office, 113 NLRB 987, 38 LRRM 2269 (C.A. D.C. June 21, 1956) 19
Panhandle Oil Co. v. *Mississippi*, 277 U.S. 218 18
Pittman v. *City of Madison*, 38 LRRM 2567 (Fla. Cir. Ct., July 14, 1956) 22
Pollock v. *Williams*, 322 U.S. 4 31
Schneider v. *Irvington*, 308 U.S. 147 13
Skinner v. *Oklahoma*, 316 U.S. 535 18
Smith v. *Cahoon*, 283 U.S. 553 ..... 18, 24, 25
Starnes v. *City of Milledgeville*, 15 LRRM 526 (Ga. Super. Ct., Aug 29, 1944) 22
Staub v. *Baxley*, 91 Ga. App. 650, 86 S.E. 2d 712 .. 11
Staub v. *Mayor of Baxley*, 211 Ga. 1, 83 S.E. 2d 606 11
Thomas v. *Collins*, 323 U.S. 516 ..... 12, 14
Thornhill v. *Alabama*, 310 U.S. 88 ..... 24, 25
United Mine Workers v. *Arkansas Oak Flooring Company*, 351 U.S. 62 21
Ward v. *Love County*, 253 U.S. 17 31

STATUTES:

Fair Labor Standards Act, Section 14 9
18 Fed. Reg 7480 (1953) 9
19 Fed. Reg. 7460 (1954) 9
21 Fed. Reg 1943, 1944 (1956) 9
Judicial Code, 28 U.S.C. § 1257(2), 2103 3
Labor Management Relations Act, 1947, Title 1, sec. 1, para. 5 20

ORDINANCES:

Bainbridge, Georgia, April 21, 1953 23
Baxley, Georgia, September 17, 1949, Minute Book 3, Page 396 3
Camilla, Georgia, May 19, 1947, City Code Section 424 22
Carrollton, Georgia, Nov. 12, 1954, Minute Book 8, Page 477 22
Dothan, Alabama, Ordinance No. 1862, October 11, 1955 23
Dublin, Georgia, April 19, 1956 22
Eupora, Webster County, Mississippi, Sept. 4, 1956, Minute Book 9, Pages 167-168 22

Page

Halifax County, Virginia, Aug. 6, 1956, Minute Book 8, Page 38 22
Hazlehurst, Jeff Davis County, Georgia, Aug. 5, 1952, Minute Book 4, Page 2 ..... 17, 22
Madison, Florida, Ordinance No. 40, Jan. 24, 1956.. 22
Madison, Georgia, July 30, 1946 23
Marianna, Florida, May 9, 1955 23
Milledgeville, Georgia 22
Russellville, Kentucky, May 8, 1956 23
Senatobia, Tate County, Mississippi, April 5, 1956 22
Thomasville, Georgia 29
Waycross, Georgia 29

MISCELLANEOUS:

Directory of National and International Labor Unions in the United States, 1955, Bull. No. 1185, U.S. Dept. of Lab., Bur. Lab. Stat., p. 31 8

IN THE

Supreme Court of the United States

October Term, 1956

No.

ROSE STAUB, *Appellant*

v.

CITY OF BAXLEY, *Appellee*

On Appeal From the Court of Appeals of the State of Georgia

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Court of Appeals of the State of Georgia, entered on April 12, 1956, affirming the judgment of the Superior Court, Appling County, Georgia, entered on December 10, 1955, which had affirmed the judgment of conviction of appellant, entered in the Mayor's Court of the City of Baxley, Appling County, Georgia, on March 15, 1954, for violation of a municipal ordinance of that city.

OPINIONS BELOW

The opinion of the Georgia Court of Appeals is reported at 94 Ga. App. 18, 93 S.E. 2d 375 (*infra*, pp. 33-41). No opinions were written by the Superior Court or by the Mayor's Court. An earlier opinion of the Georgia Court of Appeals pertaining to an earlier phase of this proceeding is reported at 91 Ga. App. 650, 86 S.E. 2d 712, and an opinion of the Supreme Court of the State of Georgia in a related proceeding is reported at 211 Ga. 1, 83 S.E. 2d 606.

JURISDICTION

Appellant was charged with and convicted of violating an ordinance of the City of Baxley entitled "An Ordinance To Regulate The Solicitation Of Membership In Organizations Among The Citizens Of City Of Baxley: To Provide For Permits For Persons Or Agents Soliciting Such Members; To Provide For License Fees And For Violation Of This Ordinance" (Tr. 13, 19, 27, 46). The judgment of conviction was entered in the Mayor's Court on March 15, 1954 (Tr. 46). A petition for certiorari was overruled by the Superior Court, and its judgment, affirming the judgment of conviction, was entered on December 10, 1955 (Tr. 62). The final judgment of the Georgia Court of Appeals, affirming the judgment of the Superior Court, was entered on April 12, 1956 (Tr. 76); a motion for rehearing was denied by that court on May 15, 1956 (Tr. 96); and an application for certiorari was denied by the Georgia Supreme Court on July 11, 1956 (Tr. 99). Notice of appeal was filed in the Georgia Court of Appeals on October 5, 1956 (Tr. 106). The jurisdiction of this Court to review by appeal the judg-

ment of the Court of Appeals is conferred by 28 U.S.C. § 1257 (2).[1]

THE STATUTE INVOLVED

The ordinance of the City of Baxley, here in issue, adopted on September 17, 1949, and appearing in minute book 3, page 396, of that city, provides as follows:

> Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payment of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.
>
> Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such

[1] A municipal ordinance constitutes "a statute of any state" within the meaning of 28 U.S.C. § 1257 (2). *Jamison* v. *Texas*, 318 U.S. 413, 414. State failure or refusal to decide the validity of a state statute, without adequate state ground, is the equivalent of a decision "in favor of its validity" for the purpose of 28 U.S.C. § 1257 (2). *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 282-283. In any event, if appeal is not proper, "the papers wherein the appeal was taken shall be regarded and acted on as a petition for a writ of certiorari. . . ." 28 U.S.C. § 2103. Other aspects of the jurisdiction of this Court are discussed *infra*, pp. 23-31.

applicant has been engaged during said time, and shall furnish at least three persons as references to applicant's character. Said application shall also furnish the information as to whether applicant is a salaried employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in the event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

Section V. The granting or refusing to grant such application for a permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

Section VI. In the event that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed

in the City of Baxley, or receives a fee of any sort from the obtaining of such members, he shall be issued a permit and license for soliciting such members upon the payment of $2,000.00 per year. Also $500.00 for each member obtained.

Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens of persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

Section VIII. All ordinances of City of Baxley in conflict with ordinance are hereby repealed.

Section IX. Should any section or portion of this ordinance be held void, it shall not affect the remaining sections and portions of same.

QUESTIONS PRESENTED

1. Whether freedom of speech, press, and peaceable assembly, guaranteed against state infringement by the Fourteenth Amendment of the United States Constitution as it incorporates the First Amendment, are abridged by an ordinance which provides that: (1) before a person, firm, or organization may solicit citizens of the municipality for membership in any organization requiring payment of membership dues or fees, such person, firm, or organization must first secure a permit from the Mayor and the City Council who may withhold or grant that permit in their discretion based on their consideration of "the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens" of the municipality; and that, (2) if the person desiring to solicit is a salaried employee or

officer of the organization for which membership is sought, or receives a fee for obtaining members, such person shall, in addition to securing a permit, pay a license fee of $2,000 per year plus $500 for each member obtained.

2. Whether the right of employees to organize and to select representatives of their own choosing for the purpose of collective bargaining and other mutual aid or protection, safeguarded by the Fourteenth Amendment of the United States Constitution against state deprivation without due process of law, is abridged by the aforesaid ordinance in that (1) it prohibits solicitation of membership for an organization without a permit and that permit may be withheld by the Mayor and the City Council from any person, firm or organization thought by them in their uncontrolled discretion and without any standards to be unsuitable, and (2) it imposes a prohibitive tax on solicitation by a salaried employee or officer of the organization for which membership is sought or by a person receiving any fee for obtaining members.

3. Whether the aforesaid ordinance denies the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution in that (1) it singles out for taxation those persons who are salaried employees or officers of the soliciting organization or who receive any fee for solicitation, leaving all others who have received a permit free to solicit without paying the tax, and (2) it imposes a tax on solicitation grossly in excess of taxes imposed on purely commercial activity.

4. Whether the aforesaid ordinance, in prohibiting in the manner described the solicitation of members

without a permit and in taxing the solicitation of members, conflicts with Section 7 of the National Labor Relations Act which provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ."

5. Whether consideration by the Supreme Court of the United States of a challenge to the validity of a municipal ordinance on federal grounds, where the challenge is to the ordinance on its face, in its entirety, and the bases of its invalidity are fully particularized, may be precluded by the refusal of the state court to entertain the merits of the challenge for the asserted reason that it is procedurally defective in that (1) the "attack should have been made against specific sections of the ordinance and not against the ordinance as a whole", and (2) "no effort" was made "to comply with any section of the ordinance."

STATEMENT

I. When and How the Federal Questions Were Raised

The federal questions presented by this appeal were first raised by appellant in the Mayor's Court of the City of Baxley by a plea in abatement prior to trial (Tr. 12, 23-26, 51). Exception was taken in that court to its overruling of the plea (Tr. 13, 51). The federal questions were thereafter urged at each succeeding stage throughout the proceedings in the Georgia courts: by certiorari in the Superior Court (Tr. 15-18); by a bill of exceptions in the Court of Appeals (Tr. 4-5); by a motion for rehearing in that court

(Tr. 77-93); and by a petition for a writ of certiorari in the Supreme Court (Tr. 107-122).

II. The Facts

The evidence relevant to appellant's conviction for violation of the ordinance of the City of Baxley adduced at the trial in the Mayor's Court shows as follows:

The International Ladies' Garment Workers' Union is a labor organization that requires dues of its members (Tr. 31).[2] On February 19, 1954, appellant Rose Staub and her companion Mamie Merritt were at a local restaurant in Baxley where they were sought out by the Chief of Police of the City of Baxley (Tr. 30). Questioned by him, Rose Staub told the Chief of Police that she was employed by the Union (Tr. 30), and she and Mamie Merritt both told him that they were in Baxley "going around talking to some of the women to organize the factory workers, * * * to gain membership and gather members for it and hold meetings with them for that purpose." He "did not understand that they were collecting money for members at that time from my conversation with them" (Tr. 31). No permit had been issued to Rose Staub or Mamie Merritt, nor had they made application for a permit, as required by the ordinance (Tr. 41).

On the same day of the conversation with the Chief of Police, a meeting was held at the home of Mrs. Catherine Taylor, attended by her, Rose Staub, Mamie

[2] The Union, headquartered in New York City, has a membership of about 440,000 persons, and has about 450 local unions located throughout the United States. Directory of National and International Labor Unions in the United States, 1955, Bull. No. 1185, U. S. Dept. of Lab., Bur. Lab. Stat., p. 31.

Merritt, and three others (Tr. 32, 35, 38). Excepting Staub and Merritt, the other four at the meeting "all work in Hazlehurst" but "live in Baxley" (Tr. 32).[3] According to Mrs. Taylor, Staub and Merritt had asked "that we hold a meeting at my house. They stated that the purpose of the meeting was for getting members for the union. They asked me to get others together" (Tr. 35). One of the four present stated that she "was interested in knowing what the union would mean to the workers" (Tr. 39). At the meeting, Staub and Merritt "just told us they wanted us to join the union, and said it would be a good thing for us to do—to join the union, and went on to tell us how this union would help us" (Tr. 37). They also explained that the membership dues "would be sixty-four cents a week" (Tr. 32, 36, 38), but that dues were not payable until the plant was organized (Tr. 43); no money was asked of the persons at the meeting (Tr. 33). The cooperation of the four was invited "to get other girls from up there to join the union," and blank membership cards were offered for that purpose (Tr. 34, 32, 33, 37, 38). Rose Staub explained that the objective sought was to "have enough cards signed to petition for an election * * * with the Labor

[3] The reference to Hazlehurst, although the record is somewhat ambiguous in this respect, is to the plant of the Hazlehurst Manufacturing Company, which Staub and Merritt were seeking to organize, located in Hazlehurst, Georgia, a town neighboring Baxley. The Wage and Hour Administrator has issued learner certificates covering this plant pursuant to Section 14 of the Fair Labor Standards Act. 21 Fed. Reg. 1943, 1944 (1956); 19 Fed. Reg. 7460 (1954); 18 Fed. Reg. 7480 (1953). Since the employees at this plant are thus "engaged in commerce or in the production of goods for commerce" within the coverage of the Fair Labor Standards Act, it is apparent that the plant's operations "affect commerce" within the more inclusive coverage conferred by that term under the National Labor Relations Act. *Kirschbaum* v. *Walling*, 316 U.S. 517, 520-521.

Board" (Tr. 44).[4] As none of the four were interested in joining the Union, no membership cards were left with them (Tr. 33, 34, 36-37).

On the same day that this meeting was held, a summons was issued by the Chief of Police commanding appellant Rose Staub to "appear before the Police Court of said City [of Baxley] at 7 o'clock P.M. on the 22 day of February, 1954, to answer to the offense of Soliciting Members for an Organization Without a Permit & License" (Tr. 19). After trial, the Mayor's Court (or the Police Court as it is also called (Tr. 52)), convicted appellant of violation of the ordinance (Tr. 13, 51). She was sentenced to thirty days imprisonment in the City Jail or a fine of three hundred dollars (*ibid.*).

III. The Disposition Below of the Federal Questions

When appellant was summoned "to answer to the offense of Soliciting Members for an Organization Without a Permit & License," she instituted a declaratory judgment action in the Superior Court, Appling County, Georgia, requesting annulment of the ordinance on federal and other grounds and praying for a temporary restraint of enforcement of the ordinance pending declaration, and a permanent injunction against its enforcement upon a declaration of invalidity. Dismissal of the action by the Superior Court was affirmed by the Georgia Supreme Court, that court holding that: " 'If the ordinance is invalid, by reason of its unconstitutionalty, or for other cause, such invalidity would be a complete defense to any prosecution

[4] The reference is obviously to the National Labor Relations Board since Georgia has no comparable state agency.

that might be instituted for its violation.'" *Staub* v. *Mayor of Baxley*, 211 Ga. 1, 83 S.E. 2d 606, 608.

Meanwhile, the temporary restraint against prosecution having been denied, the cause proceeded to trial before the Mayor's Court. In that court, as stated (*supra*, p. 7), the federal questions presented by this appeal were first raised by a plea in abatement prior to trial, and exception was taken in that court to its overruling of the plea. The federal questions were renewed on appeal to the Superior Court from the judgment of conviction (*supra*, p. 7). That court dismissed the appeal without considering the merits (Tr. 2-3, 63), holding in accordance with the City's contention that the appeal was improperly perfected in that the certiorari bond had been approved by and filed with the wrong City official (Tr. 51-52). It so held despite the clear showing that this had been brought about by knowing misrepresentations of the City's officials (Tr. 54-58). On appeal from that determination, the Georgia Court of Appeals held that the bond had been "properly approved and certified" and directed that the case "be returned to the superior court for decision on its merits." *Staub* v. *Baxley*, 91 Ga. App. 650, 86 S.E. 2d 712, 715. On the remand, issue having been joined by the City's denial "that the ordinance is invalid or void for any of the reasons stated" by appellant (Tr. 52), the Superior Court affirmed the judgment of conviction (Tr. 62).

On the second appeal to the Georgia Court of Appeals, that court declined to consider the merits in any respect, holding that "it is not necessary to pass upon the sufficiency of the evidence, the constitutionality of the ordinance, or any other phase of the case . . ." (*infra*, pp. 40-41). It grounded this determination on

its view that: (1) appellant "in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole" (*infra*, p. 40); and (2) appellant "made no effort to secure a license" (*infra*, p. 40). No contention of this character had been advanced by the City either in the Mayor's Court or in the Superior Court; no suggestion of it appears in the otherwise full answer filed by the City in the Superior Court (Tr. 51-52). A motion for rehearing was denied by the Court of Appeals and an application for certiorari was denied by the Georgia Supreme Court (*supra*, p. 2).

THE QUESTIONS ARE SUBSTANTIAL

1. Solicitation of membership in a labor organizaton embraces each of the cognate freedoms of speech, press, and peaceable assembly. It is carried on by such means as "personal contacts on streets or at home, telephones, letters or advertised meetings. . . ." *National Labor Relations Board* v. *Babcock and Wilcox Company*, 351 U.S. 105, 111. In this case a home meeting was held and a discussion of the desirability of joining the Union took place. "The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly." *Thomas* v. *Collins*, 323 U.S. 516, 532. And as often happens, literature may also be distributed to persuade employees to join unions, thereby bringing freedom of press into play.

The ordinance in this case conditions the exercise of these freedoms upon securing a permit from the Mayor and Council of the City of Baxley who may grant or withhold the permit in their discretion based on their

consideration of "the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley" (*supra*, p. 4). This constitutes previous restraint in its most vicious and primitive form. *Lovell* v. *Griffin*, 303 U.S. 444, 450-452; *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion in *s. c.*, 316 U.S. 584, 600-602. The discretion conferred on the Mayor and City Council in Baxley is as offensive to the First Amendment as was the discretion of the Director of Safety in Jersey City to refuse a permit for use of the streets or parks to hold a public meeting if in his opinion such refusal would prevent "riots, disturbances or disorderly assemblage" (*Hague* v. *Committee For Industrial Organization*, 307 U.S. 496, 514-516); or the discretion of the Chief of Police in Irvington to refuse a permit to a canvasser based on his determination that "the canvasser is not of good character or is canvassing for a project not free from fraud" (*Schneider* v. *Irvington*, 308 U.S. 147, 157-159, 163-165); or the discretion of the Secretary of the Public Welfare Council in Connecticut to withhold a certificate required for the solicitation of money if he is not persuaded that the "cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity" (*Cantwell* v. *Connecticut*, 310 U.S. 296); or the discretion of the Mayor in Paris, Texas, to refuse a permit to "solicit orders for books," to "sell books," or "to canvass," if "after investigation" he deems such refusal "proper and advisable" (*Largent* v. *Texas*, 318 U.S. 418). In this case, as in those, "Dissemination of ideas depends upon the approval of the distributor by the official.

This is administrative censorship in an extreme form." *Id.* at 422.[5]

The ordinance in this case applies to *all* persons. But it would be no less offensive if its application were confined to "the individual who . . . in exercising these rights [of speech, press and assembly] receives compensation for doing so." *Thomas* v. *Collins*, 323 U.S. 516, 531. Nor does it make a difference that the object is to induce employees to join the Union. The protection of the First Amendment embraces "the opportunity to persuade to action, not merely to describe facts." *Id.* at 537. And the activity is not deprived of its character as speech, press and assembly by calling it "solicitation." *Id.* at 536-537, and concurrence at 546-547.

The ordinance does not stop with censorship. It further provides that, if the person who would solicit members is a "salaried employee or officer of the organization," or receives "a fee of any sort from the obtaining of such members," he must, in addition to securing a permit, pay an annual tax of $2,000 plus "$500.00 for each member obtained" (*supra*, pp. 4-5). This flat tax—plainly more than a nominal fee to defray the expense of a valid regulatory scheme—is fixed in amount, unrelated to the scope of the activity, without basis either in present or potential revenue, and unapportioned in any way. "It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 114. "In its potency as a prior restraint on publi-

[5] See also, *Niemotko* v. *Maryland*, 340 U.S. 268; *Kunz* v. *New York*, 340 U.S. 290.

cation the flat license tax falls short only of outright censorship or suppression." *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion in *s. c.*, 316 U.S. 584, 611. And the flat tax is no less offensive because it is levied on the solicitor who is a salaried employee or officer of the organization, or receives a fee for his work; a person is not stripped of his protection from the imposition of a flat license tax on his exercise of First Amendment rights because he "earns his livelihood" from that exercise. *Follett* v. *McCormick*, 321 U.S. 573, 576-578. See also, *Grosjean* v. *American Press Co.*, 297 U.S. 233.

Its character as a flat license tax alone vitiates the levy imposed by the ordinance. As we show hereafter, however, the tax is also prohibitive (*infra*, pp. 16-18) and discriminatory (*infra*, pp. 18-20), and for these additional reasons cannot survive the First Amendment's guaranty against abridgment of the freedoms of speech, press, and peaceable assembly.

2. The right of employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and otherwise to engage in concerted activity for mutual aid or protection, is a "fundamental right" which exists independently of statutory conferment. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33-34; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 263-264; *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 259. It is safeguarded by the Fourteenth Amendment against state deprivation without due process of law. The ordinance in this case offends the Fourteenth Amendment in at least two respects:

(a) The ordinance restricts the right to engage in organizational activity to those persons, firms or organizations whom the Mayor and the City Council in their uncontrolled discretion and without any standards deem suitable. The constitutional vice of this restriction has been lucidly stated by the California Supreme Court in *In Re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 719:

> . . . on the face of the ordinance the indefinite standards which it enunciates provide a mechanism for the deprival of constitutional rights, not only on the basis of the guarantees applicable to free speech but also on the basis of those protecting the right to engage in lawful fashion in a lawful activity . . . the council members in the exercise of their power might very conceivably conclude that because of an applicant's labor union affiliations or because of his attitude upon controversial labor issues he did not have the prescribed qualities. It is entirely possible that on occasion a majority of the council might be members of a rival labor union or they might be employers engaged in a controversy with the union represented by the applicant. Certainly the standard provided by section 6 of the Redding ordinance is entirely subjective. Each council member is left to determine in his own mind what is "likely" to be the future conduct of the applicant. The character or extent of showing necessary to satisfy the council that the applicant is of good moral character and will not resort to the activities mentioned is not set forth. Satisfaction may be circumscribed by individual whim, caprice, or personal prejudice.

(b) The tax imposed by the ordinance has the effect of prohibiting solicitation of members by all persons who are paid for the work, whether employed at it full

or part-time, and by all officers of the organization, whether paid or not. Directed thus at those who are the effective exponents of the organization, the ordinance requires of them a $2,000 annual tax plus an additional $500 for each member obtained.

The $2,000 annual tax, even if its payment were not required of more than one individual, would alone suppress his engagement in solicitation. But it cannot be so confined. An effective organizational campaign ordinarily requires more than one paid organizer or officer. In this case there were two (*supra*, p. 8). Thus the annual tax must be multiplied by the number of such persons who participate in the campaign in the particular community. It does not stop even there. "It is common knowledge that many of the larger industrial plants . . . are so situated that they draw workers from as many as five or six or more cities." *In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 722. Organizers and officers may thus be required to move from city to city in any one campaign, and are certainly required to be itinerant where they are engaged in more than one campaign, as they frequently are. Each city may enact a similar tax (*infra*, pp. 22-23), and the cumulative effect is obviously prohibitive. *Murdock* v. *Pennsylvania*, 319 U.S. 105, 115; *In re Porterfield, supra*, 168 P. 2d at 722. The record in this case shows that the working force is drawn from at least two cities, Baxley and Hazlehurst (*supra*, p. 9). Hazlehurst has an ordinance virtually identical to Baxley's except that the annual tax is $5,000.[6] Appellant would therefore be required to pay an annual tax of at least $7,000, if the ordinances be valid.

[6] Ordinance of August 5, 1952, City of Hazlehurst, County of Jeff Davis, State of Georgia, Minute Book No. 4, Page 2.

Finally, the additional tax of $500 for each membe obtained without more prohibits solicitation. In thi case the weekly due required of a member are 6 cents, payable only it the plant is organized (*supra*, p 9). At this rate, a person would have to be a dues paying member for 15 years before the initial $50 outlay were recovered, without counting the inter vening cost of providing service for that member.

Solicitation of members is to a union "what breath ing is to a human being." *In re Porterfield*, *supra* 168 P. 2d at 722. To prohibit it, as this tax effectivel does, is to kill unionization. "The power to tax is no the power to destroy while this court sits." Mr. Justic Holmes in *Panhandle Oil Co.* v. *Mississippi*, 277 U.S 218, 223.

3. While a "state has a broad discretion in classi fication," the "constitutional guaranty of equal protec tion of the laws is interposed against discrimination that are entirely arbitrary." *Smith* v. *Cahoon*, 28 U.S. 553, 566-567.[7] The tax imposed by the ordinance in this case is discriminatory in this sense in at leas two respects:

(a) The annual tax of $2,000 plus $500 for each member obtained is grossly in excess of taxes whic the City of Baxley imposes on business enterprises en gaged in purely commercial activity for profit. Th Clerk of the City Council of Baxley testified as fol lows concerning "a schedule of licenses that ar charged by the City of Baxley for various business" (Tr. 41-42):

---

[7] See also, *Skinner* v. *Oklahoma*, 316 U.S. 535; *Hale* v. *Bimc Trading, Inc.*, 306 U.S. 375.

> The amount of yearly license required for automobile accessories, wholesale and retail, is $100. $150 is the amount charged a bank or banker. For a billiard or pool room, the first table is $100, and $10 each additional table. The book or magazine agent is charged $10 per day. $2 per day is charged for a bill poster and bill cards, and sample advertising matter. $50 is charged for a cafe or restaurant. A carnival tent show is charged $100 per day with the consent of the Mayor and Council. The amount charged to merchants with general and specific stock is broken down into terms of merchandise and it is based on inventory. $150 is charged from $10,000 to $20,000. $100 is charged from $5,000 to $10,000. The regular moving picture show is charged $200 per year.

The vice of the discriminatory levy imposed by the ordinance is emphasized by the force of the observation that, as stated by the National Labor Relations Board, labor organizations, "when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme," and are not classifiable as "business organizations." *Oregon Teamsters' Security Plan Office*, 113 NLRB 987, 991, affirmed 38 LRRM 2269/ (C.A.D.C. June 21, 1956), certiorari granted, November 13, 1956.

(b) The ordinance requires a permit of *all* who would solicit members. But it imposes the tax only on those who are paid organizers or who are officers of the organization. There is nothing either in their compensation or in their status that provides a rational basis for this differentiation. The tax imposed bears no conceivable relationship to the compensation received. And giving the widest possible latitude to

status, it is wholly unrelated to the exaction based upon it.

4. Section 7 of the National Labor Relations Act provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." The ordinance in this case conflicts with the National Act in numerous respects:

(a) In *National Labor Relations Board* v. *Babcock and Wilcox Company*, 351 U.S. 105, this Court held that an employer may, if he does not discriminate, close his property to non-employee organizers, but only "if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message" (*id.* at 112), "such as [by] the mail, telephones, as well as [at] the homes of the workers . . ." (*id.* at 107). The ordinance, however, closes every means of communication to every one save only as the Mayor and the City Council choose to open them to those they approve. It clogs the very interchange which the National Act contemplates shall be free.

(b) The soliciting of membership in a labor organization is the preliminary but indispensable step to the designation of the union as the bargaining representative by a majority of employees in the appropriate unit. The ordinance undercuts the "full freedom"[8] of employees to make their selection by confining the appeals to which they may listen to those made by

[8] Title I, sec. 1, para. 5, Labor Management Relations Act, 1947.

"persons, firms or organizations", if any, whom the Mayor and the City Council approve. But "Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon that agent's qualifications." *Hill* v. *Florida*, 325 U.S. 538, 541. See also, *United Mine Workers* v. *Arkansas Oak Flooring Company*, 351 U.S. 62.

(c) "Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.'" *Hill* v. *Florida*, 325 U.S. 538, 542; see also, *N.L.R.B.* v. *Hearst Publications*, 322 U.S. 111, 123-124. If the ordinances of the type in this case are permitted to stand, the erosion from 48 *state* enactments will seem as nothing compared to the crazy quilt which would be produced by the multiplicity of ordinances spawned by town after town within a state. Workers employed in a single plant, but living in different neighboring towns, would have their choice circumscribed by as many of the different views as the different city fathers entertained; as in this case (*supra*, p. 17), Baxley might bar an organization which Hazlehurst found acceptable.

(d) The tax imposed by the ordinance is levied for engaging in the solicitation of membership. The activity subjected to the tax is conduct protected by the National Labor Relations Act. A state may not burden by a fixed-sum license tax activity safeguarded by Congress pursuant to its exercise of its power to regulate interstate commerce. Cf. *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U.S. 33, 45, n. 2, 55-57. In addition, the same reasons which make this tax offensive to the First and Fourteenth Amendments

(*supra*, pp. 14-15, 16-19) show that it is incompatible with the National Labor Relations Act. Finally, "Congress occupied this field and closed it to state regulation." *International Union* v. *O'Brien*, 339 U.S. 454, 457. See also, *Denton* v. *City of Carrollton*, 235 F. 2d 481 (C.A. 5).

5. The questions presented have widespread public importance. A random search has uncovered numerous ordinances of the type in this case. Indications are that systematic inquiry would disclose many more. Three have been found which are identical to the instant ordinance except for variations in the tax in two[9] and no tax in the third.[10] Six have been found which differ in style but not in purport from the instant ordinance; in each the issuance of the license is discretionary and a tax is imposed.[11] Other ordinances im-

---

[9] Madison, Florida, Ordinance No. 40, Jan. 24, 1956 ("$300.00 per year, and $25.00 for each member"; invalidated in *Pittman* v. *City of Madison*, 38 LRRM 2567 (Fla. Cir. Ct., July 14, 1956)); Hazlehurst, Jeff Davis County, Georgia, Aug. 5, 1952, Minute Book 4, Page 2 ("$5000.00 per year").

[10] Halifax County, Virginia, Aug. 6, 1956, Minute Book 8, Page 38.

[11] Carrollton, Georgia, Nov. 12, 1954, Minute Book 8, Page 477 ($1,000 tax plus $100 for each day of activity; in *Denton* v. *City of Carrollton*, 235 F. 2d 481 (C.A. 5), the Court of Appeals for the Fifth Circuit remanded the case to the District Court to hear the merits of a complaint challenging the validity of this ordinance); Milledgeville, Georgia ($5,000 annual tax; invalidated in *Starnes* v. *City of Milledgeville*, 15 LRRM 526 (Ga. Super Ct., Aug. 29, 1944)); Dublin, Georgia, April 19, 1956 ($2,500 annual tax; this ordinance also requires an oath forswearing, *inter alia*, communism and belief "in the overthrowing of the municipal or state laws in regard to segregation"); Camilla, Georgia, May 19, 1947, City Code, Section 424, as amended ($1,500 annual tax); Senatobia, Tate County, Mississippi, April 5, 1956 ($1,000 annual tax); Eupora, Webster County, Mississippi, Sept. 4, 1956, Minute Book 9, Pages 167-168 ($1,000 annual tax).

pose a tax, some coupled with a registration requirement which may or may not have discretionary elements.[12]

6. The Georgia Court of Appeals declined to consider the merits of the federal grounds urged to invalidate the ordinance for the asserted reasons that (1) the "attack should have been made against specific sections of the ordinance and not against the ordinance as a whole," and (2) "no effort" was made "to comply with any section of the ordinance" (*infra*, p. 40). Whether the refusal to decide a federal question is supported by an adequate state ground "is itself a Federal question." *Lovell* v. *Griffin*, 303 U.S. 444, 450.[13] For "constitutional rights are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it. . . ." *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 282.

(a) Georgia's insistence upon an attempt at compliance with the ordinance as the price of challenging its validity on its face resurrects that State's contention interred by this Court in *Lovell* v. *Griffin*, 303 U.S. 444, 452-453: "As the ordinance is void on its face, it was

---

[12] Bainbridge, Georgia, April 21, 1953 ($500 annual tax on "Labor Agents" plus registration required for a permit); Marianna, Florida, May 9, 1955 ($750 tax on a "Labor Organizer"); Madison, Georgia, July 30, 1946 ("$100.00 for the privilege of soliciting membership in, or organizating such [Labor] Unions"); Dothan, Alabama, Ordinance No. 1862, Oct. 11, 1955 ("Labor Union Organizers, $50.00"); Russellville, Kentucky, May 8, 1956 ($250 tax on "labor organizer and promoter" and $100 tax on "labor solicitor;" tax required to obtain a license good for the period from issuance to succeeding April 30th; license will issue "if the application gives correctly the information required;" license revocable if the application contains "false information" or the licensee is convicted of a felony).

[13] See also, *Angel* v. *Ballington*, 330 U.S. 183, 189.

not necessary for appellant to seek a permit under it. She was entitled to contest its validity in answer to the charge against her." Only after a determination that an ordinance has a valid scope for operation on its face can an attempt to comply with it be exacted as the condition of attacking anticipated invalidity in its application. *Smith* v. *Cahoon*, 283 U.S. 553, 562. But where, as here, "the ordinance is void on its face," the "Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands." *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion in *s. c.*, 316 U.S. 584, 602-603. See also, *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 386; *Thornhill* v. *Alabama*, 310 U.S. 88, 97.

(b) Equally without merit is the State's refusal to adjudicate the validity of the ordinance because challenged "as a whole."

(*i*) It is clear that a state statute or ordinance may be void in whole on federal grounds. It is therefore indispensable to the preservation of the federal right to permit an "attack [which] is directed, not against any specific provision or provisions, but against the ordinance as an entirety." *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 386. Any other view requires the conclusion that to secure relief from an invalid restraint at all, a person must suffer its continuance in part. The permissible scope of an attack must at least be commensurate with the source of the wrong. If that source is an ordinance void in its entirety, the injured person must be free to level his challenge at the whole of it. Appellant was charged with and convicted of violating the ordinance as a whole; she is

entitled to a defense as broad as the charge and the conviction. *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion in *s. c.*, 316 U.S. 584, 603.

It is true that, though a state statute or ordinance be challenged in its entirety, a determination of the merits may result in a holding that it is valid in one part and invalid in another with the good separable from the bad and capable of independent enforcement. But that is no more reason for refusing, in advance of determination, to entertain the merits of the challenge than it would be for declining to adjudicate an attack on a part of an ordinance or statute because it may prove not to be invalid at all. ". . . until such separation has been accomplished by judicial decision, the statute remains with its inclusive purport, and those concerned in its application have no means of knowing definitely what eventually will be eliminated and what will be left. This was the situation which confronted the appellant when obedience to the statute was demanded and punishment for its violation was sought to be inflicted." *Smith* v. *Cahoon*, 283 U.S. 553, 563-564. The State may not "impose upon laymen, at the peril of criminal prosecution, the duty of severing the statutory provisions and of thus resolving important constitutional questions with respect to the scope" of the law. *Id.* at 564. "One who might have had a license for the asking may . . . call into question the *whole scheme of licensing* when he is prosecuted for failure to procure it." *Thornhill* v. *Alabama*, 310 U.S. 88, 97. (Emphasis supplied.) See also, *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion in *s. c.*, 316 U.S. 584, 603.

What a state *may* require, when a statute or ordinance is challenged in whole or in part, is that the alleged bases of invalidity be adequately particularized and timely raised. But no more may be required. "No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67.[14] There is no question in this case, and none has been suggested, but that the bases of invalidity of the instant ordinance were fully particularized. A reading of the plea in abatement (Tr. 23-26), by which the federal questions were raised prior to trial in the Mayor's Court, shows that the grounds of invalidity were detailed with far greater specificity than in *Lovell* v. *Griffin*, 303 U.S. 444, 448-449, where this Court, rejecting Georgia's contrary determination in that case, held that the statement of the federal questions presented "was sufficiently specific" (303 U.S. at 449). And since the federal questions were first presented in the Mayor's Court, and thereafter urged at each succeeding stage throughout the proceeding, there is equally no doubt, and none has been suggested, but that they were raised in due time.

To hold that the decision below rests on an adequate state ground would be, therefore, to sanction obliteration of federal rights. "Whatever springes the state may set for those who are endeavoring to assert rights

[14] See also, *Braniff Airways* v. *Nebraska State Board*, 347 U.S. 590, 599.

that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. * * * The principle is general and necessary." *Davis* v. *Wechsler*, 263 U.S. 22, 24. It applies here. *Brown* v. *Western Railway*, 338 U.S. 294, 296, 298-299.

(*ii*) The rule which the court below professes in this case does not accurately reflect Georgia practice. Georgia permits an attack upon the whole of a statute or ordinance as well as on a particular part or parts of it; in either case, the requirement for entertainment of the merits of the challenge is reasonable particularization.

The Georgia rule is stated as follows in *Flynn* v. *State*, 209 Ga. 519, 74 S.E. 2d 461, 464:

> In order to raise a question as to the constitutionality of a "law" at least three things must be shown: (1) *the statute, or particular part or parts of a statute* which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein *the statute, or some designated part of it,* violated such constitutional provision.
>
> * * *
>
> Until a clear, definite and specific attack is made upon *the constitutionality of the act as a whole, or upon the constitutionality of a specifically pointed out part or parts of it,* this court must and will decline to deal with its validity. . . . (Emphasis supplied.)

Thus, in *Atlanta Loan Co.* v. *Peterson*, 181 Ga. 266, 182 S.E. 15, in entertaining an attack upon a statute as "unconstitutional and void" (182 S.E. at 16), the

Georgia Supreme Court concluded that, as "to the rights conferred by the prior security deed, the entire act is invalid" (*id.* at 15), and it explained its approach as follows (*id.* at 17):

> As indicated in the preceding statement, the defendant challenged the Act of March 28, 1935 [a complex three-section enactment], on several grounds. Since we are of the opinion that *the whole act is invalid* as applied to the prior security deed, for the reason that its enforcement would unconstitutionally impair the obligations of such contract, we do not deem it necessary to consider the other questions raised. While under this record the defendant was directly concerned with section 2 only, *it did not attack this section in particular, but in each ground of objection assailed the statute as a whole.* In this state of the record *it is necessary to examine the attack in its entirety,* because, if any part of it may be constitutionally applied to the contract in question, the attack embracing a mass objective only will necessarily fail, and the judgment against the plea should be affirmed. Theoretically, the defendant's position would have been safer if a separate objection had been made to section 2; and at the same time, in the view which we take of the case, a decision of the single question would have been sufficient under the present record. But *after a consideration of the act as a whole,* we are convinced that *none of it may be constitutionally enforced* as to contracts in existence at the time of its passage, and thus that the loan company should have prevailed in the court below. (Emphasis supplied.)

See also, *Miller* v. *Head,* 186 Ga. 694, 198 S.E. 680, 687; *Franklin* v. *Harper,* 205 Ga. 779, 55 S.E. 2d 221, 223-224, 226-227, 228-229, appeal dismissed, 339 U.S. 946.

Concrete exemplification of this approach is afforded by the decision of the court below in *Campbell v. City of Thomasville*, 6 Ga. App. 212, 64 S.E. 815. The Court had under review convictions for the violation of two ordinances, one of the City of Thomasville, the other of the City of Waycross, both regulating the sale of "near beer." The Thomasville ordinance had four sections (64 S.E. at 817-818); the Waycross ordinance had twelve sections (*id.* at 820-821); and each had numerous intra-sectional regulations. The attack levelled at the Thomasville ordinance was that "the said ordinance as it is written is void in its entirety . . . upon its face" (*id.* at 818-819); the Waycross ordinance was attacked as a whole as "illegal, invalid, and contrary to the law of the state" (*id.* at 819-820), neither attack attempted to segregate the sections of the ordinance but stated the reasons supporting invalidity at large. The Court examined each section of the ordinance to adjudge the validity and constitutionality of each (*id.* at 821-827). The Court concluded that "several provisions of the Waycross ordinance . . . [are] unreasonable and void, and that one requirement of the Thomasville ordinance . . . [is] invalid" (*id.* at 827). At this stage the Court put the following question (*ibid.*):

> What effect does this have upon the convictions? An ordinance may be void in part and good in part. The void and the good may be so interdependent as to render the whole void, or may be so separable as to allow a segregation and the enforcement of one part, while the remainder is nugatory. [Cases cited.] So, also, an ordinance apparently reasonable on its face may be shown to be unreasonable and invalid as actually applied to the existing state of circumstances.

The Court concluded that "the invalid requirement in the Thomasville ordinance is [not] so material a part of the enactment, so interwoven into the whole legislative scheme, that its presence renders the entire ordinance void" (*ibid*). It therefore sustained the conviction for violation of this ordinance for failure to comply with the valid part. But it concluded that the invalid parts of the Waycross ordinance rendered the whole nugatory and it set aside the conviction under it (*id.* at 828).

Accordingly, even if it were otherwise free, as we have shown it is not (*supra*, pp. 24-27), to decline to entertain the merits of the federal questions in this case on the basis of a procedure which itself offends federal rights, it is plain that the refusal of the court below to decide the federal claims here is in any event without warrant in Georgia procedure.[15] This being

[15] For other Georgia cases which have either voided a statute or ordinance in its entirety, or entertained the merits of such an attack, see: *National Linen Service Corp.* v. *Mayor of Milledgeville*, 51 Ga. App. 167, 179 S.E. 837; *Chandler* v. *City of Tifton*, 206 Ga. 43, 55 S.E. 2d 569; *Ellington Co.* v. *City of Macon*, 177 Ga. 541, 170 S.E. 813. *Anthony* v. *City of Atlanta*, 66 Ga. App. 504, 18 S.E. 2d 81, on which the court below relied, is beside the point. The ordinance in that case was a very lengthy regulation of beauty parlors covering such questions as minimum prices, hours during which the shop could remain open, licenses, and the like. Appellant was convicted of violating section 1 of the ordinance in that he charged $1.50 for a permanent wave, the minimum price fixed by the ordinance being $2.50. Appellant apparently did not attack section 1 of the ordinance, the provision under which he was convicted, did not particularize in what respect other sections of the ordinance were invalid, and did not show wherein section 1 would be annulled if his amorphous attack on other sections prevailed. Indeed, he did not even specify whether his attack was grounded on the Federal or state constitution. In these circumstances the Court's conclusion that the constitutional attack was too indefinite is quite understandable. This decision, however, furnishes no fair support for the result reached here, as the other Georgia decisions cited and discussed above plainly show.

so, its determination cannot stand in the way of adjudication of the federal questions, for the "non-Federal grounds of decision" are "without any fair or substantial support. * * * Of course, if non-Federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided." *Ward* v. *Love County*, 253 U.S. 17, 22. Accordingly, "When an asserted federal right is denied, the sufficiency of the grounds of denial is for this Court to decide." *Angel* v. *Bullington*, 330 U.S. 183, 189. The ostensible state ground in this case cannot survive objective examination.[16]

---

[16] See also, *Pollock* v. *Williams*, 322 U.S. 4, 13 and n. 21; *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.*, 243 U.S. 157, 163-164; *Broad River Power Co.* v. *South Carolina*, 281 U.S. 537, 540; *Demorest* v. *City Bank Farmers Trust Co.*, 321 U.S. 36, 42; *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 282-283.

The studied avoidance of decision of the federal questions in this case is underscored by the sequence of decisions below. As shown (*supra*, pp. 10-12), the declaratory judgment action was dismissed by the Georgia Supreme Court because the validity of "the ordinance", it was stated, would be open on the prosecution for its violation; the Superior Court initially invoked a spurious ground to hold the appeal had not been properly perfected; thereafter the Court of Appeals invoked no less spurious grounds to decline to reach the merits of the federal questions; and the Georgia Supreme Court denied certiorari.

CONCLUSION

For the reasons stated, it is respectfully submitted that probable jurisdiction should be noted.

MORRIS P. GLUSHIEN
1710 Broadway
New York 19, N. Y.

ED PEARCE
POOLE, PEARCE & HALL
1202 Candler Building
Atlanta 3, Georgia

BERNARD DUNAU
JAFFEE & DUNAU
912 Dupont Circle
Building, N. W.
Washington 6, D. C.

Attorneys for Appellant.

November, 1956

APPENDIX

I

[Judgment of the Georgia Court of Appeals]

COURT OF APPEALS OF THE STATE OF GEORGIA

Atlanta, April 12, 1956

The Honorable Court of Appeals met pursuant to adjournment.

The following judgment was rendered:

Rose Staub v. City of Baxley

This case came before this court upon a writ of error from the Superior court of Appling county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Gardner, Townsend and Carlisle, JJ., concur.

II

[Opinion of Georgia Court of Appeals]

36161

Rose Staub v. City of Baxley

By the Court:

The trial court did not err in overruling the writ of certiorari.

Rose Staub, hereinafter called the defendant, was arrested for violation of an ordinance of the City of Baxley. Following the arrest of the defendant, she filed a petition for injunction in the Superior Court of Appling County, seeking to have the City of Baxley enjoined from proceeding with the prosecution, and seeking a declaratory judgment adjudging the ordinance void. The superior court refused to grant such relief. This judgment was affirmed by the Supreme Court with one Justice dis-

senting. See Staub v. Mayor & C. of Baxley, 211 Ga. 1 (83 S. E. 2d 606). The City of Baxley then proceeded with the prosecution which resulted in conviction of the defendant in the Mayor's court of the City of Baxley for violation of an ordinance of the City of Baxley. We will hereinafter refer to the City of Baxley as the plaintiff. The ordinance prohibited the solicitation of members for an organization without a permit and license. The defendant applied for and was granted a writ of certiorari, to which the mayor filed his answer. The defendant (plaintiff in certiorari), within the statutory time, filed her exceptions and traverse to said answer to the writ of certiorari. Counsel for both parties stipulated that all issues of fact and law should be submitted to and decided by the judge of the superior court, without the intervention of of a jury.

After the evidence had been submitted and argument had, the judge overruled such exceptions and traverse of the defendant (plaintiff in certiorari) to the answer of the judge to the writ of certiorari, and sustained the answer to the writ of certiorari and dismissed the petition. The question presented to the Court of Appeals was whether or not a certiorari bond was properly signed. This court reversed the judgment of the trial court on this point, holding that the certiorari bond was properly signed, and the case was returned to the trial court to be tried on its merits. (See Staub v. City of Baxley, 91 Ga. App. 650 (86 S. E. 2d 712). The case was so tried. The defendant again applied for the writ of certiorari, which was granted.

The Judge of the Superior Court of Appling County overruled the writ of certiorari and sustained the judgment of the Mayor's Court of the City of Baxley, thus convicting the defendant (plaintiff in certiorari) of the violation of the ordinance of the City of Baxley prohibiting the solicitation of members for an organization without

a permit and license. It is to this judgment that error is assigned here.

For clarity we will quote the ordinance in its entirety: "Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payment of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.

"Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicant's character. Said application shall also furnish the information as to whether applicant is a salaried employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

"Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may

submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

"Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

"Section V. The granting or refusing to grant such permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

"Section VI. In the e nt that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or received a fee of any sort from the obtaining of such members, he shall be issued a permit and license for soliciting such members upon the payment of $2000.00 per year. Also $500.00 for each member obtained.

"Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens of persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

"Section VIII. All ordinances of City of Baxley in conflict with ordinance are hereby repealed.

"Section IX. Should any section or portion of this ordinance be held void, it shall not affect the remaining sections and portions of same.

"Duly adopted by Mayor and Council of City of Baxley in regular meeting duly assembled on the 17th day of September, 1949.

/s/ C. A. WHITAKER, *Mayor*
/s/ J. H. KEELS, *Clerk.*"

The writ of certiorari sets out that the said ordinance is repugnant to and violative of the First Amendment and Fourteenth Amendment to the Constitution of the United States; that such ordinance is repugnant to and violative to paragraph 8 of the National Labor Relations Act and tends to contravent said act and the public policy of the United States as contained in said act by establishing unwarranted conditions upon the right of the defendant to participate in the labor activities secured by the National Labor Relations Act and the public policy of the United States; that the ordinance was founded upon the unreasonable and invalid classification of persons who must pay the confiscatory fee set out in the ordinance; that said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization; that said ordinance is invalid in that it shows on its face that it is a regulatory measure imposing an excessive tax upon a privilege; that the ordinance shows upon its face that it is a device intended to prevent formation of labor unions; that such ordinance is void in that it is repugnant to and violative of Article I, § 1, of the Constitution of the State of Georgia, in that it is not impartial but is unreasonable and arbitrary, and that the petitioner is deprived of her liberty and property without due process of law; that same is a misuse and abuse of the public power of the City of Baxley by subterfuge, thus depriving the defendant and others of their rights.

The evidence submitted on the hearing is substantially as follows: W. A. Schuman, Chief of Police of the City of Baxley, testified that he talked with the defendant; that the defendant stated that she was a paid employee of a

labor organization, and her duties were to solicit members for that organization; that one Mamie Merritt was also so employed; and that the defendant had no permit to solicit members and had made no application for a permit. On cross-examination the witness testified that he did not see the witness solicit any members. Recalled, the witness testified that he did not tell the defendant or Mamie Merritt to get out of town and stay out. On re-cross-examination he testified that he arrested the defendant and Mamie Merritt.

Louise Bowyer, a witness for the plaintiff, testified that she knew the defendant, and that the defendant and Mamie Merritt came to her home and stated that they were trying to get people to join the union. On cross-examination, the same witness stated that she did not see the union card; that neither the defendant nor Mamie Merritt asked the witness for any money; that the witness was not asked to sign a card; and that no membership cards were left with the witness.

Catherine Taylor testified on behalf of the plaintiff that the defendant and Mamie Merritt held a meeting at the home of the witness, and stated that the purpose of the meeting was to get members for the union; that the defendant offered to give the witness a membership card upon the payment of 64 cents per week dues, payable 4 weeks in advance; and that the witness did not join and no cards were left.

Sylvia Dixon, a witness for the plaintiff, testified substantially that she went to a meeting where the defendant and Mamie Merritt were present and that she was asked by the defendant to join the union, and that membership cards were offered to the witness.

Lois Taylor Sharp, Clerk of the City Council and witness for the plaintiff, testified substantially that neither the defendant nor Mamie Meritt made application for a permit as covered by the ordinance, and that no permit

had been issued to them. On cross-examination, the witness testified that she had had no one ask for a permit or a license to solicit members for an organization. She testified that the license fee required for automobile accessories is $100.00; for a bank or banker $150.00; for a billard or pool room $100.00 for the first table and $10.00 for each additional table; $10.00 for a magazine or book agent, etc. (We give these figures to show the comparative amounts assessed against these people and/or business in relation to the permit or license fee for soliciting members for an organization.)

The defendant made the statement that she talked with several ladies about the union.

Gardner, P. J. Counsel for the defendant excepts to the judgment of the court for the following reasons: (1, 2, 3). The evidence is contrary to law, without evidence to support it; (4) "because the ordinance . . . was and is unconstitutional and unreasonable, null and void in that: (a) Said ordinance . . . shows on its face that it is repugnant to and violative of the First Amendment and the Fourteenth Amendment to the Constitution of the United States; (b) said ordinance is repugnant to and violative of section 7 of the National Labor Relations Act . . .; (c) said ordinance is not a valid ordinance in that it denies equal protection of the law to petitioner and others . . .; (d) said ordinance is invalid . . .; (e) said ordinance is an invalid regulation in that it leaves within the discretion of the mayor, etc., the refusing or granting the license required; (f) said ordinance is void in that it is repugnant to and violative of Article I, Section I, paragraph 3 of the Constitution of the State of Georgia in that petitioner is deprived of her liberty and property without due process of law; (i) said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley but shows on its face that it is unreasonable; (j) said ordinance is patently void in that same is a misuse and abuse of the police powers, etc.

It will be noted that counsel for the defendant in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole. In Anthony v. City of Atlanta, 66 Ga. App. 504, 505 (18 S. E. 2d 81), this court said: "It is well settled that one or more sections of an ordinance may be unconstitutional and other sections constitutional; and where the allegations as to the unconstitutionality of an ordinance fail to definitely state what section of the ordinance is unconstitutional, such allegations are too indefinite to raise any question for decision as to the unconstitutionality of the ordinance. Glover v. Rome, 173 Ga. 239 (160 S. E. 249), and cit."

It seems that the defendant made no effort to secure a license. Having made no effort to secure a license, the defendant is in no position to claim that any section of the ordinance is invalid or unconstitutional. See Campbell v. City of Thomasville, 6 Ga. App. 212 (18b), (64 S. E. 815), wherein this court said: "One who has been convicted of selling 'near beer' in violation of that ordinance, but who has made no application to the city council and has tendered no bond at all, is not in a position to complain of the illegality of the requirement that the sureties on the bond shall be freeholders. This provision being void, the presumption is that, if he had tendered a bond otherwise sufficient, the city council would have ignored the void provision and would have accepted the bond.

The cases cited by counsel for the defendant will be found to have identified the sections of the ordinance in question and are therefore not in point.

It affirmatively appears that the attack was not made against any particular section of the ordinance as being void or unconstitutional, and that the defendant has made no effort to comply with any section of the ordinance. This being true, it is not necessary to pass upon the

sufficiency of the evidence, the constitutionality of the ordinance, or any other phase of the case as argued by counsel for the defendant except as hereinabove discussed. In addition to the case cited hereinabove, see Taylor v. Flint, 35 Ga. 124 (3), and Board of Education of Glynn County v. Mayor, of Brunswick, 72 Ga. 353.

The trial court did not err in overruling the writ of certiorari.

Judgment affirmed. Townsend and Carlisle, JJ., concur.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
AUG 23 1957
JOHN T. FEY, Clerk

No. 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

ROSE STAUB, *Appellant*

v.

CITY OF BAXLEY, *Appellee*

On Appeal From the Court of Appeals of the State of Georgia

BRIEF FOR THE APPELLANT

MORRIS P. GLUSHIEN
1710 Broadway
New York 19, N. Y.

ED PEARCE
POOLE, PEARCE & HALL
1202 Candler Building
Atlanta 3, Georgia

BERNARD DUNAU
JAFFEE & DUNAU
912 Dupont Circle Building, N. W.
Washington 6, D. C.

Attorneys for Appellant.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
The Statute Involved	3
Questions Presented	5
Statement	7
I. When and how the federal questions were raised	7
II. The facts	8
III. The disposition below of the federal questions	11
Summary of Argument	12
Argument	18
I. The ordinance abridges the rights guaranteed by the Fourteenth Amendment, as it incorporates the First Amendment, by making the exercise of the freedoms of speech, press, and assembly dependent upon securing a permit within the discretion of the municipality to withhold and upon paying a flat license tax	19
A. The requirement of a permit	19
B. The imposition of a flat license tax	22
II. The ordinance abridges the "fundamental right" of employees to engage in organizational activity which the Fourteenth Amendment safeguards against state deprivation without due process of law	28
III. The tax imposed by the ordinance is based on a discriminatory classification and therefore offends the constitutional guaranty of equal protection of the laws	34
IV. Prohibition of solicitation of members without a permit and taxation of solicitation of members conflict with the rights guaranteed employees by Section 7 of the National Labor Relations Act	38
Conclusion	48

AUTHORITIES CITED

CASES: Page

Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 261 28
American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184 42
Apex Hosiery Co. v. Leader, 310 U.S. 469 42
Arnold v. Panhandle & Sante Fe Ry. Co., 353 U.S. 360 7
Butler v. Michigan, 352 U.S. 380 27
Cantwell v. Connecticut, 310 U.S. 296 ..... 20, 27
Deeney v. Hotel & Office Employees' Union, 57 Ga. App. 2d 1023, 134 F. 2d 328 35
Denton v. City of Carrollton, 235 F. 2d 481 ..... 26, 31
Denton v. City of Carrollton, 32 CCH Labor Cases ¶ 70,850 26
Edwards v. California, 314 U.S. 160 43
Follett v. McCormick, 321 U.S. 573 ..... 24, 25
Freeman v. Hewit, 329 U.S. 249 ..... 46, 47
Grosjean v. American Press Co., 297 U.S. 233 25
Guss v. Utah Labor Relations Board, 353 U.S. 1 47
Hague v. Committee for Industrial Organization, 307 U.S. 496 20
Hale v. Bimco Trading Co., 306 U.S. 375 34
Harlan Fuel Co., 8 NLRB 25 40
Hill v. Florida, 325 U.S. 538 ..... 17, 40, 41
In re Porterfield, 28 Cal. 2d 91, 168 P. 2d 706 ..... 15, 24, 29, 30, 32, 34, 37
International Union v. O'Brien, 339 U.S. 454 47
International Union v. Wisconsin Employment Relations Board, 336 U.S. 245 28
Jamison v. Texas, 318 U.S. 413 2
Jones v. Opelika, 319 U.S. 103 ..... 14, 20, 23, 24, 25, 44
Kirschbaum v. Walling, 316 U.S. 517 9
Konigsberg v. State Bar of California, 353 U.S. 252 7
Kunz v. New York, 340 U.S. 290 21
Largent v. Texas, 318 U.S. 418 ..... 13, 20
Lawrence v. State Tax Commission, 286 U.S. 276 2
Lovell v. Griffin, 303 U.S. 444 ..... 13, 20

Page

Marsh v. Alabama, 326 U.S. 501 19
Morey v. Doud, 1 L. Ed. 2d 1485 34
Murdock v. Pennsylvania, 319 U.S. 105 .....14, 23, 24, 25 32, 45
McGoldrick v. Berwind-White Coal Min. Co., 309 U.S. 33 45
National Labor Relations Board v. Babcock & Wilcox Company, 351 U.S. 105 .....16, 19, 37, 39
National Labor Relations Board v. Hearst Publications, 322 U.S. 111 .....41, 46
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 .....14, 28
Niemotko v. Maryland, 340 U.S. 268 21
Nippert v. Richmond, 327 U.S. 416 .....41, 45
Panhandle Oil Co. v. Mississippi, 277 U.S. 218 ...15, 34
Pennsylvania v. Nelson, 350 U.S. 497 27
Pittman v. City of Madison, 38 LRRM 2567 31
Quaker City Cab Co. v. Pennsylvania, 277 U.S. 389 34
Robbins v. Shelby County Taxing District, 120 U.S. 489 .....45, 46
Schneider v. Irvington, 308 U.S. 147 20
Skinner v. Oklahoma, 316 U.S. 535 34
Smith v. Cahoon, 283 U.S. 553 .....16, 34
South Carolina State Highway Department v. Barnwell Brothers, 308 U.S. 177 43
Starnes v. City of Milledgeville, 15 LRRM 526 31
Staub v. Baxley, 91 Ga. App. 650, 86 S.E. 2d 712 .. 12
Staub v. Mayor of Baxley, 211 Ga. 1, 83 S.E. 2d 606 11
Thomas v. Collins, 323 U.S. 516 .....19, 21, 41
Thornhill v. Alabama, 310 U.S. 88 27
United Mine Workers v. Arkansas Oak Flooring Company, 351 U.S. 62 .....40, 47
United Stee Workers v. Fuqua, 40 LRRM 2241 33, 39, 40, 47
West Point Wholesale Grocery Co. v. Opelika, 354 U.S. 390 45
Yick Wo v. Hopkins, 118 U.S. 356 29

STATUTES: Page

Fair Labor Standards Act, Section 14 9
Internal Revenue Code, 1954, §§ 511-514 24
Judicial Code, 28 U.S.C. § 1257 (2) 2
Labor Management Relations Act, 1947, Title I, Sec. 1, para. 5 ..... 17, 40
National Labor Relations Act, Sec. 7 ..... 6, 38
Rules of the Supreme Court, 16 (4) 7

ORDINANCES:

Abbeville County, South Carolina, Act 248, L. 1957 .. 32
Ashburn, Georgia, Ord. No. 373, April 5, 1956 32
Bainbridge, Georgia, April 21, 1953 33
Barnwell County, South Carolina, Act 997, L. 1956 .. 32
Baxley, Georgia, September 17, 1949, Minute Book 3, Page 396 3
Camilla, Georgia, May 19, 1947, City Code, Sec. 424 31
Canton, Mississippi, July 3, 1956 31
Carrollton, Georgia, November 12, 1954, Minute Book 8, Page 477 ..... 26, 31
Carrollton, Georgia, October 5, 1956, Minute Book 9, Page 139 ..... 26, 31
Cullman, Alabama, Ord. No. 461, June 24, 1957 .. 33
Dothan, Alabama, Ord. No. 1862, October 11, 1955 33
Dublin, Georgia, April 19, 1956 31
Edgeville County, South Carolina, Act 537, L. 1957 32
Eupora, Webster County, Mississippi, September 4, 1956, Minute Book 9, Page 167 31
Florence County, South Carolina Act 340, L. 1957 32
Guin, Alabama, May 16, 1955 31
Halifax County, Virginia, August 6, 1956, Minute Book 8, Page 38 31
Hazlehurst, Georgia, August 5, 1952, Minute Book 4, Page 2 31
Kershaw County, South Carolina, Act 689, L. 1957 .. 32
Lee County, South Carolina, Act 477, L. 1957 32

Page

Madison, Florida, January 24, 1956 31
Madison, Georgia, July 30, 1946 33
Marianna, Florida, May 9, 1955 33
Marlboro County, South Carolina, Act 484, L. 1957 .. 32
Milledgeville, Georgia 31
McCormick County, South Carolina, Act 605, L. 1957 32
Newnan, Georgia, May 21, 1956 31
Russellville, Kentucky, May 8, 1956 33
Senatobia, Tate County, Mississippi, April 3, 1956 31
Williamsburg County, Act 478, L. 1957 32

MISCELLANEOUS:

Directory of National and International Labor Unions in the United States, 1955, Bull. No. 1185, U.S. Dept. of Lab., Bur. Lab. Stat., p. 31 8
18 Fed. Reg. 7480 (1953) 9
19 Fed. Reg. 7460 (1954) 9
21 Fed. Reg. 1943 (1956) 9
Senate Report on Violations of Free Speech and Rights of Labor, S. Rep. No. 1150, 77th Cong., 2d Sess., Part 1 39

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 48

ROSE STAUB, *Appellant*

v.

CITY OF BAXLEY, *Appellee*

On Appeal From the Court of Appeals of the State of Georgia

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the Georgia Court of Appeals is reported at 94 Ga. App. 18, 93 S.E. 2d 375 (R. 34-38). No opinions were written by the Superior Court or by the Mayor's Court. An earlier opinion of the Georgia Court of Appeals pertaining to an earlier phase of this proceeding is reported at 91 Ga. App. 650, 86 S.E. 2d 712, and an opinion of the Supreme Court of the State of Georgia in a related proceeding is reported at 211 Ga. 1, 83 S.E. 2d 606.

JURISDICTION

Appellant was charged with and convicted of violating an ordinance of the City of Baxley entitled "An Ordinance To Regulate The Solicitation Of Membership In Organizations Among The Citizens Of City Of Baxley: To Provide For Permits For Persons Or Agents Soliciting Such Members: To Provide For License Fees And For Violation Of This Ordinance" (R. 5, 9-11). The judgment of conviction was entered in the Mayor's Court on March 15, 1954 (R. 5). A petition for certiorari was overruled by the Superior Court, and its judgment, affirming the judgment of conviction, was entered on December 10, 1955 (R. 32). The final judgment of the Georgia Court of Appeals, affirming the judgment of the Superior Court, was entered on April 12, 1956 (R. 39); a motion for rehearing was denied by that court on May 15, 1956 (R. 39); and an application for certiorari was denied by the Georgia Supreme Court on July 11, 1956 (R. 40). Notice of appeal was filed in the Georgia Court of Appeals on October 5, 1956 (R. 40). The jurisdictional statement was filed in this Court on November 29, 1956, and probable jurisdiction was noted on January 14, 1957 (R. 45), 352 U.S. 962. The jurisdiction of this Court to review by appeal the judgment of the Georgia Court of Appeals is conferred by 28 U.S.C. § 1257 (2).[1]

---

[1] A municipal ordinance constitutes "a statute of any state" within the meaning of 28 U.S.C. § 1257 (2). *Jamison* v. *Texas*, 318 U.S. 413, 414. State failure or refusal to decide the validity of a state statute, without adequate state ground, is the equivalent of a decision "in favor of its validity" for the purpose of 28 U.S.C. § 1257 (2). *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 282-283.

THE STATUTE INVOLVED.

The ordinance of the City of Baxley, here in issue; adopted on September 17, 1949, and appearing in minute book 3, page 396, of that city; provides as follows (R. 9-11):

> Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payment of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.
>
> Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicant's character. Said application shall also furnish the information as to whether applicant is a salaried employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.
>
> Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the in-

formation given in the application, or in the event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may submit for consideration any evidence that he may desire bearing on the application, and any interested persons shall have the right of appearing and giving evidence to the contrary.

Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

Section V. The granting or refusing to grant such application for a permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

Section VI. In the event that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or receives a fee of any sort from the obtaining of such members, he shall be issued a permit and license for soliciting such members upon the payment of $2,000.00 per year. Also $500.00 for each member obtained.

Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens of persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

Section VIII. All ordinances of City of Baxley in conflict with ordinance are hereby repealed.

Section IX. Should any section or portion of this ordinance be held void, it shall not affect the remaining sections and portions of same.

QUESTIONS PRESENTED

1. Whether freedom of speech, press, and peaceable ssembly, guaranteed against state infringement by ie Fourteenth Amendment of the United States Con- itution as it incorporates the First Amendment, are ridged by an ordinance which provides that: (1) be- re a person, firm, or organization may solicit citizens the municipality for membership in any organiza- n requiring payment of membership dues or fees, ch person, firm, or organization must first secure permit from the Mayor and the City Council who ay withhold or grant that permit in their discretion sed on their consideration of "the character of the plicant, the nature of the business of the organiza- n for which members are desired to be solicited, and effects upon the general welfare of citizens" of the nicipality; and that, (2) if the person desiring to icit is a salaried employee or officer of the organiza- n for which membership is sought, or receives a fee obtaining members, such person shall, in addition securing a permit, pay a license fee of $2,000 per ar plus $500 for each member obtained.

2. Whether the right of employees to organize and select representatives of their own choosing for the rpose of collective bargaining and other mutual aid protection, safeguarded by the Fourteenth Amend- nt of the United States Constitution against state privation without due process of law, is abridged by

the aforesaid ordinance in that (1) it prohibits solicitation of membership for an organization without a permit and that permit may be withheld by the Mayor and the City Council from any person, firm or organization thought by them in their uncontrolled discretion and without any standards to be unsuitable, and (2) it imposes a prohibitive tax on solicitation by a salaried employee or officer of the organization for which membership is sought or by a person receiving any fee for obtaining members.

3. Whether the aforesaid ordinance denies the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution in that (1) it singles out for taxation those persons who are salaried employees or officers of the soliciting organization or who receive any fee for solicitation, leaving all others who have received a permit free to solicit without paying the tax, and (2) it imposes a tax on solicitation grossly in excess of taxes imposed on purely commercial activity.

4. Whether the aforesaid ordinance, in prohibiting in the manner described the solicitation of members without a permit and in taxing the solicitation of members, conflicts with Section 7 of the National Labor Relations Act which provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ."

5. Whether consideration by the Supreme Court of the United States of a challenge to the validity of a

municipal ordinance on federal grounds, where the challenge is to the ordinance on its face, in its entirety, and the bases of its invalidity are fully particularized, may be precluded by the refusal of the state court to entertain the merits of the challenge for the asserted reason that it is procedurally defective in that (1) the "attack should have been made against specific sections of the ordinance and not against the ordinance as a whole", and (2) "no effort" was made "to comply with any section of the ordinance."[2]

STATEMENT

I. When and How the Federal Questions Were Raised

The federal questions presented by this appeal were first raised by appellant in the Mayor's Court of the City of Baxley by a plea in abatement prior to trial (R. 4, 12-15, 26). Exception was taken in that court to its overruling of the plea (R. 4-5, 26). The federal questions were thereafter urged at each succeeding stage throughout the proceedings in the Georgia courts: by certiorari in the Superior Court (R. 6-9); by a bill of exceptions in the Court of Appeals (R. 3); by a motion for rehearing in that court (Tr. 77-93);

---

[2] Since this Court noted probable jurisdiction, and did not postpone consideration of the question of jurisdiction to the hearing of the case on the merits (see Rule 16 (4) of the Rules of this Court), it would appear that, at least tentatively, question 5 has been resolved in favor of appellant's position. This question is fully briefed in the jurisdictional statement (pp. 23-31), and the argument there set out, to which the Court is respectfully referred, will not be repeated here. Additional confirmation of appellant's position may be found in decisions rendered by this Court after probable jurisdiction was noted. *Arnold* v. *Panhandle & Santa Fe Ry. Co.*, 353 U.S. 360, 361; *Konigsberg* v. *State Bar of California*, 353 U.S. 252, 254-258.

and by a petition for a writ of certiorari in the Supreme Court (Tr. 107-122).

II. The Facts

The evidence relevant to appellant's conviction for violation of the ordinance of the City of Baxley adduced at the trial in the Mayor's Court shows as follows:

The International Ladies' Garment Workers' Union is a labor organization that requires dues of its members (R. 16).[3] On February 19, 1954, appellant Rose Staub and here companion Mamie Merritt were at a local restaurant in Baxley where they were sought out by the Chief of Police of the City of Baxley (R. 16). Questioned by him, Rose Staub told the Chief of Police that she was employed by the Union, and she and Mamie Merritt both told him that they were in Baxley "going around talking to some of the women to organize the factory workers, * * * to gain membership and gather members for it and hold meetings with them for that purpose" (*ibid.*). He "did not understand that they were collecting money for members at that time from my conversation with them" (*ibid.*). No permit had been issued to Rose Staub or Mamie Merritt, nor had they made application for a permit, as required by the ordinance (R. 23). During their respective terms of office, no one has ever applied to either the Chief of Police or the Clerk of the City Council for a permit (R. 16, 23).

---

[3] The Union, headquartered in New York City, has a membership of about 440,000 persons, and has about 450 local unions located throughout the United States. Directory of National and International Labor Unions in the United States, 1955, Bull. No. 1185, U.S. Dept. of Lab., Bur. Lab. Stat., p. 31.

On the same day of the conversation with the Chief of Police, a meeting was held at the home of Mrs. Catherine Taylor, attended by her, Rose Staub, Mamie Merritt, and three others (R. 17, 19-20, 21). Excepting Staub and Merritt, the other four at the meeting "all work in Hazlehurst" but "live in Baxley" (R. 17, 21).[4] According to Mrs. Taylor, Staub and Merritt had asked "that we hold a meeting at my house. They stated that the purpose of the meeting was for getting members for the union. They asked me to get others together" (R. 20). One of the four present stated that she "was interested in knowing what the union would mean to the workers" (R. 22). At the meeting, Staub and Merritt "just told us they wanted us to join the union, and said it would be a good thing for us to do—to join the union, and went on to tell us how this union would help us" (R. 21). They also explained that the membership dues "would be sixty-four cents a week" (R. 17, 20, 22), but that dues were not payable until the plant was organized (R. 25); no money was asked of the persons at the meeting (R. 18). The

[4] The reference to Hazlehurst, although the record is somewhat ambiguous in this respect, is to the plant of the Hazlehurst Manufacturing Company, which Staub and Merritt were seeking to organize, located in Hazlehurst, Georgia, a town neighboring Baxley. The Wage and Hour Administrator has issued learner certificates covering this plant pursuant to Section 14 of the Fair Labor Standards Act. 21 Fed. Reg. 1943, 1944 (1956); 19 Fed. Reg. 7460 (1954); 18 Fed. Reg. 7480 (1953). Since the employees at this plant are thus "engaged in commerce or in the production of goods for commerce" within the coverage of the Fair Labor Standards Act, it is apparent that the plant's operations "affect commerce" within the more inclusive coverage conferred by that term under the National Labor Relations Act. *Kirschbaum* v. *Walling*, 316 U.S. 517, 520-521.

cooperation of the four was invited "to get other girls from up there to join the union," and blank membership cards were offered for that purpose (R. 17-18, 21, 22). Rose Staub explained that the objective sought was to "have enough cards signed to petition for an election * * * with the Labor Board" (R. 25).[5] As none of the four were interested in joining the Union, no membership cards were left with them (R. 18, 19, 20).

On the same day that this meeting was held, a summons was issued by the Chief of Police commanding appellant Rose Staub to "appear before the Police Court of said City [of Baxley] at 7 o'clock P. M. on the 22 day of February, 1954, to answer to the offense of Soliciting Members for an Organization Without a Permit & License" (R. 9). After trial, the Mayor's Court (or the Police Court as it is also called (R. 26)), convicted appellant of violation of the ordinance (R. 5, 26). She was sentenced to thirty days imprisonment in the City Jail or a fine of three hundred dollars (*ibid.*).

Mamie Merritt was tried together with Rose Staub, and she too was convicted and given the same sentence as Rose Staub for violating the ordinance.[6] By agreement of counsel the disposition of the judgment of conviction of Mamie Merritt is to await and conform with the outcome of the instant appeal.

---

[5] The reference is obviously to the National Labor Relations Board since Georgia has no comparable state agency.

[6] Transcript of Evidence, Mayor's Court, p. 35, not part of the record in this Court.

III. The Disposition Below of the Federal Questions

When appellant was summoned "to answer to the offense of Soliciting Members for an Organization Without a Permit & License," she instituted a declaratory judgment action in the Superior Court, Appling County, Georgia, requesting annulment of the ordinance on federal and other grounds and praying for a temporary restraint of enforcement of the ordinance pending declaration, and a permanent injunction against its enforcement upon a declaration of invalidity. Dismissal of the action by the Superior Court was affirmed by the Georgia Supreme Court, that court holding that " 'If the ordinance is invalid, by reason of its unconstitutionality, or for other cause, such invalidity would be a complete defense to any prosecution that might be instituted for its violation.' " *Staub v. Mayor of Baxley*, 211 Ga. 1, 83 S.E. 2d 606, 608.

Meanwhile, the temporary restraint against prosecution having been denied, the cause proceeded to trial before the Mayor's Court. In that court, as stated (*supra*, p. 7), the federal questions presented by this appeal were first raised by a plea in abatement prior to trial, and exception was taken in that court to its overruling of the plea. The federal questions were renewed on appeal to the Superior Court from the judgment of conviction (*supra*, p. 7). That court dismissed the appeal without considering the merits (R. 2, 33), holding in accordance with the City's contention that the appeal was improperly perfected in that the certiorari bond had been approved by and filed with the wrong City official (R. 26). It so held despite the clear showing that this had been brought about by knowing misrepresentations of the City's officials (R. 27-31). On appeal from that determina-

tion, the Georgia Court of Appeals held that the bond had been "properly approved and certified" and directed that the case "be returned to the superior court for decision on its merits." *Staub* v. *Baxley*, 91 Ga. App. 650, 86 S. E. 2d 712, 715. On the remand, issue having been joined by the City's denial "that the ordinance is invalid or void for any of the reasons stated" by appellant (R. 26), the Superior Court affirmed the judgment of conviction (R. 32).

On the second appeal to the Georgia Court of Appeals, that court declined to consider the merits in any respect, holding that "it is not necessary to pass upon the sufficiency of the evidence, the constitutionality of the ordinance, or any other phase of the case . . . " (R. 38). It grounded this determination on its view that: (1) appellant "in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole" (R. 37); and (2) appellant "made no effort to secure a license" (R. 38). A motion for rehearing was denied by the the Court of Appeals and an application for certiorari was denied by the Georgia Supreme Court (*supra*, p. 2).[7]

SUMMARY OF ARGUMENT

The ordinance challenged here conditions the solicitation of membership in a labor organization upon securing a permit, the grant or denial of which is within the discretion of the municipality, and upon payment of a flat license tax. It is typical of a great and growing number of such ordinances. The ordinance is

[7] With respect to the state court's declination to reach the merits of the federal questions presented, see supra, p. 7 n. 2.

invalid because it abridges the exercise of the rights of speech, press, and assembly, because it offends due process, because it denies the equal protection of the laws, and because it is incompatible with the National Labor Relations Act.

I

The ordinance conditions the solicitation of membership in a labor organization—and thus the exercise of the rights of speech, press, and assembly which is inseparable from it—upon securing a permit from the Mayor and Council of the City of Baxley who may grant or withhold the permit in their discretion based on their consideration of "the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley" (*supra*, p. 4). This constitutes previous restraint in its most vicious and primitive form. *Lovell* v. *Griffin*, 303 U.S. 444, 450-452. For here, as in *Largent* v. *Texas*, 318 U.S. 418, 422, "Dissemination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form."

The ordinance does not stop with censorship. It further provides that, if the person who would solicit members is a "salaried employee or officer of the organization," or receives "a fee of any sort from the obtaining of such members," he must, in addition to securing a permit, pay an annual tax of $2,000 plus "$500.00 for each member obtained" (*supra*, p. 4). This annual flat tax is fixed in amount, unrelated to the scope of the activity, without basis either in present or potential revenue, and unapportioned

in any way. "It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 114. "In its potency as a prior restraint on publication the flat license tax falls short only of outright censorship or suppression." *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinions in *s. c.*, 316 U.S. 584, 611.

Its character as a flat license tax alone vitiates the levy imposed by the ordinance. But the tax is also prohibitive and discriminatory, and for these additional reasons cannot survive the First Amendment's guaranty against abridgement of the freedoms of speech, press, and peaceable assembly.

II

Quite aside from the constitutional protection which solicitation of membership in a labor organization enjoys because of its First Amendment attributes, it derives additional protection from the due process provision of the Constitution. The right of employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and otherwise to engage in concerted activity for mutual aid or protection, is a "fundamental right" which exists independently of statutory conferment. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33-34. The ordinance curtails, indeed suppresses, the exercise of the "fundamental right" to solicit membership in a labor organization in a manner offensive to due process.

The ordinance restricts the right to engage in organizational activity to those persons, firms or organizations whom the Mayor and the City Council in their uncontrolled discretion and without any standards deem suitable. To engage in organizational activity cannot be a "fundamental right" and at the same time subject to governmental constraint which knows no bounds except the individual official's sense of self-restraint.

The tax imposed by the ordinance, apart from its invalidity as a flat license tax regardless of amount, is so exorbitant that it has the effect of prohibiting solicitation of members by all persons who are paid for the work, whether employed at it full or part-time, and by all officers of the organization, whether paid or not. Directed thus at those who are the effective exponents of the organization, the ordinance requires of each of them a $2,000 annual tax plus an additional $500 for each member obtained.

Solicitation of members is to a union "what breathing is to a human being." *In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 722. To prohibit it, as this tax effectively does, is to kill unionization. "The power to tax is not the power to destroy while this court sits." Mr. Justice Holmes in *Panhandle Oil Co.* v. *Mississippi*, 277 U.S. 218, 223.

III

In addition to the invalidity of the tax for the separate reasons that it is a flat license tax and it is prohibitive, the tax imposed by the ordinance is also discriminatory. While a "state has a broad discretion in classification," the "constitutional guaranty of

equal protection of the laws is interposed against discriminations that are entirely arbitrary." *Smith* v. *Cahoon*, 283 U.S. 553, 566-567. The discrimination worked by the ordinance is without rational basis in at least two respects. First, the tax imposed is grossly in excess of taxes which the City of Baxley levies on business enterprises engaged in purely commercial activity for profit. Secondly, the ordinance requires a permit of all who would solicit members. But it imposes the tax only on those persons who are paid for the work, whether employed at it full or part-time, and by all officers of the organization, whether paid or not. But there is nothing either in their compensation or in what they do that provides a rational basis for this differentiation. The tax imposed bears no conceivable relationship to the compensation received. And to base the exaction on what these persons do—soliciting membership—is to identify the very reason that the classification is invalid.

IV

The ordinance is incompatible with the guarantee of Section 7 of the National Labor Relations Act that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ."

A. In *National Labor Relations Board* v. *Babcock and Wilcox Company*, 351 U.S. 105, this Court held that an employer may, if he does not discriminate, close his property to non-employee organizers, but only "if reasonable efforts by the union through other available

channels of communication will enable it to reach the employees with its message" (*id.* at 112), "such as [by] the mail, telephones, as well as [at] the homes of the workers . . ." (*id.* at 107). The ordinance, however, closes every means of communication to every one save only as the Mayor and the City Council choose to open them to those they approve. It clogs the very interchange which the National Act contemplates shall be free.

B. The soliciting of membership in a labor organization is the preliminary but indispensable step to the designation of the union as the bargaining representative by a majority of employees in the appropriate unit. The ordinance undercuts the "full freedom"[8] of employees to make their selection by confining the appeals to which they may listen to those made by "persons, firms or organizations", if any, whom the Mayor and the City Council approve. But "Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon that agent's qualifications." *Hill* v. *Florida*, 325 U.S. 538, 541.

C. "Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.'" *Hill* v. *Florida*, 325 U.S. 538, 542. If ordinances of the type in this case are permitted to stand, the erosion from 48 *state* enactments will seem as nothing compared to the crazy quilt which would be pro-

---

[8] Title I, sec. 1, para. 5, Labor Management Relations Act, 1947.

duced by the multiplicity of ordinances spawned by town after town within a state.

D. The tax imposed by the ordinance is levied for engaging in the solicitation of membership. The activity subjected to the tax is conduct protected by the National Labor Relations Act. A state may not burden by a fixed-sum license tax activity safeguarded by Congress pursuant to its exercise of its power to regulate interstate commerce. In addition, the same reasons which make this tax offensive to the First and Fourteenth Amendments show that it is incompatible with the National Labor Relations Act.

ARGUMENT

The ordinance challenged here conditions the solicitation of membership in a labor organization upon securing a permit, the grant or denial of which is within the discretion of the municipality, and upon payment of a flat license tax. We shall show that (1) the ordinance abridges the exercise of the rights of speech, press, and assembly, (2) the ordinance offends due process, (3) the ordinance denies the equal protection of the laws, and (4) the ordinance is incompatible with the National Labor Relations Act. We attempt to marshal under the separate headings appropriate to each contention the particular considerations which appear to be most relevant to it. In a larger sense, however, the considerations are not separable, and it is almost literally true that each factor which bears upon one subject bears also upon every other. It is all one ball of wax.

I. THE ORDINANCE ABRIDGES THE RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT, AS IT INCORPORATES THE FIRST AMENDMENT, BY MAKING THE EXERCISE OF THE FREEDOMS OF SPEECH, PRESS, AND ASSEMBLY DEPENDENT UPON SECURING A PERMIT WITHIN THE DISCRETION OF THE MUNICIPALITY TO WITHHOLD AND UPON PAYING A FLAT LICENSE TAX.

Solicitation of membership in a labor organization embraces each of the cognate freedoms of speech, press, and peaceable assembly. It is carried on by such means as "personal contacts on streets or at home, telephones, letters or advertised meeting. . . ." *National Labor Relations Board* v. *Babcock and Wilcox Company*, 351 U.S. 105, 111. In this case a home meeting was held and a discussion of the desirability of joining the Union took place. "The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly." *Thomas* v. *Collins*, 323 U.S. 516, 532. And as often happens, literature may also be distributed to persuade employees to join unions, thereby bringing freedom of press into play.

The ordinance in this case suffers from the twin infirmities of making the exercise of these freedoms "dependent on a flat license tax . . . [and a] permit to be issued by an official who could deny it at will." *Marsh* v. *Alabama*, 326 U.S. 501, 504.

A. The Requirement of a Permit

The ordinance conditions the solicitation of membership in a labor organization—and thus the exercise of the rights of speech, press, and assembly which is inseparable from it—upon securing a permit from the Mayor and Council of the City of Baxley who may grant or withhold the permit in their discretion based

on their consideration of "the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley" (*supra*, p. 4). This constitutes previous restraint in its most vicious and primitive form. *Lovell* v. *Griffin*, 303 U.S. 444, 450-452; *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinions in *s. c.*, 316 U.S. 584, 600-602. The discretion conferred on the Mayor and City Council in Baxley is as offensive to the First Amendment as was the discretion of the Director of Safety in Jersey City to refuse a permit for use of the streets or parks to hold a public meeting if in his opinion such refusal would prevent "riots, disturbances or disorderly assemblage" (*Hague* v. *Committee For Industrial Organization*, 307 U.S. 496, 514-516); or the discretion of the Chief of Police in Irvington to refuse a permit to a canvasser based on his determination that "the canvasser is not of good character or is canvassing for a project not free from fraud" (*Schneider* v. *Irvington*, 308 U.S. 147, 157-159, 163-165); or the discretion of the Secretary of the Public Welfare Council in Connecticut to withhold a certificate required for the solicitation of money if he is not persuaded that the "cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity" (*Cantwell* v. *Connecticut*, 310 U.S. 296); or the discretion of the Mayor in Paris, Texas, to refuse a permit to "solicit orders for books," to "sell books," or "to canvass," if "after investigation" he deems such refusal "proper and advisable" (*Largent* v. *Texas*, 318 U.S. 418). In this case, as in those, "Dissemination of ideas depends upon the ap-

proval of the distributor by the official. This is administrative censorship in an extreme form." *Id.* at 422.[9]

The length to which the present ordinance goes is manifest from the fact that, unlike the foregoing instances, its application is not even colorably confined to activity on the streets, in parks, or at other public places, to selling or the solicitation of funds, or to house-to-house canvassing. Instead, it invades the very home itself to make it a crime for a guest without a permit to persuade those voluntarily gathered there to join a union. The vice of the ordinance is exposed by appellee in its motion to dismiss the appeal in this Court. Appellee there states that if appellant would but apply for it, a permit would be issued to her, for there is "no question as to the responsibility and integrity of the appellant and the union which she represents" (p. 7). Appellee is thus necessarily asserting the power to withhold a permit if in its view a question of "responsibility and integrity" does exist. So long as the First Amendment stands, a person's right to exercise the freedoms it protects cannot be made to depend on governmental satisfaction with his "responsibility and integrity."

The ordinance in this case applies to *all* persons. But it would be no less offensive if its application were confined to "the individual who . . . in exercising these rights [of speech, press, and assembly] receives compensation for doing so." *Thomas* v. *Collins*, 323 U.S. 516, 531. In our pecuniary society it would strike a fatal blow to the First Amendment if the protection it

[9] See also, *Niemotko* v. *Maryland*, 340 U.S. 268; *Kunz* v. *New York*, 340 U.S. 290.

extends were confined to the unpaid volunteer. Nor does it make a difference that the object is to induce employees to join the Union. The protection of the First Amendment embraces "the opportunity to persuade to action, not merely to describe facts." *Id.* at 537. And the activity is not deprived of its character as speech, press and assembly by calling it "solicitation." *Id.* at 536-537, and concurrence at 546-547.

B. The Imposition of a Flat License Tax

The ordinance does not stop with censorship. It further provides that, if the person who would solicit members is a "salaried employee or officer of the organization," or receives "a fee of any sort from the obtaining of such members," he must, in addition to securing a permit, pay an annual tax of $2,000 plus "$500.00 for each member obtained" (*supra*, p. 4).

Appellee in its motion to dismiss in this Court confesses that "the ordinance requiring large payments of money by paid organizers is unconstitutional . . ." (p. 6). But the vice of the tax goes deeper. It is not the amount alone, but its character as a flat license tax regardless of the amount, which vitiates the levy.

The annual tax imposed is fixed in amount, unrelated to the scope of the activity, without basis in either present or potential revenue, and unapportioned in any way. It is plainly more than a nominal fee to defray the expense of a conceivably valid regulatory scheme. The tax is the same whether the solicitor engages in the taxed activity within the community for one day, one week, or one year; it is the same regardless of the success of the activity; it is the same regardless of the revenue in the form of membership fees which may ultimately be realized from the activity; it

is the same regardless of the solicitor's income from the activity; indeed, an uncompensated officer of the organization must pay the same tax for soliciting as the individual who is paid for it.[10] And as we show hereafter (*infra*, pp. 30-33), the realistic incidence of the tax cannot be measured by considering only its impact on one individual in one community. The tax must be multiplied by the number of individuals in the community who carry on the activity and by the number of communities which have similar taxes to which these individuals may extend their activity.

The flat tax imposed by the present ordinance has therefore precisely the same characteristics as the flat taxes invalidated by this Court in *Murdock* v. *Pennsylvania*[11] and *Jones* v. *Opelika*.[12] In those cases, the tax was imposed on evangelical activity—the distribution of religious literature and personal visitations. In this case, the tax is imposed on the solicitation of membership. In those cases, the highest of the taxes imposed appears to have been $20 for a three-week period of activity;[13] in this case, the tax is $2,000 per year plus $500 for each member obtained. In those cases, as in

---

[10] The tax is required of a "salaried employee or officer." Thus, the adjective "salaried" seems to qualify "employee" but not "officer." While it is perhaps possible to interpret the ordinance to apply the qualification of compensation to both the employee and the officer, we believe that the ordinance, fairly read, requires the tax of the uncompensated as well as the paid officer.

[11] 319 U.S. 105.

[12] 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinions in *s. c.*, 316 U.S. 584.

[13] *Murdock* v. *Pennsylvania*, *supra*, 319 U.S. at 106; *Jones* v. *Opelika*, *supra*, 316 U.S. at 592.

this case, the exercise of First Amendment rights constitutes the activity taxed. And so, there as here, "It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 114. "In its potency as a prior restraint on publication the flat license tax falls short only of outright censorship or suppression." *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinions in *s. c.*, 316 U.S. 584, 611.

The flat tax is no less offensive because it is levied on the solicitor who is a salaried employee or officer of the organization, or receives a fee for his work. We put aside the fact that the tax is not laid upon compensated solicitation only, but is also levied upon solicitation by an unsalaried officer, for the element of remuneration is beside the point. What is critical is that a person is not stripped of his protection from the imposition of a flat license tax on his exercise of First Amendment rights because he "earns his livelihood" from that exercise. *Follett* v. *McCormick*, 321 U.S. 573, 576-578.[14] The factor of compensation is relevant only to establish a valid basis for nondiscriminatory taxation of income derived from the activity or property used in it.[15] But to say that they like other citi-

[14] And see *In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 723: "It is of no consequence in this respect that only those who solicit for compensation are required to pay a tax."

[15] Of course officers, members, and employees of labor organizations pay the same property and income taxes to which all others in the community are subject. And the labor organization itself pays taxes on its property and is subject to a federal income tax on its "unrelated business taxable income." 1954 Internal Revenue Code, §§ 511-514.

zens may be subject to general taxation does not mean that they can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." *Follett* v. *McCormick*, 321 U.S. 573, 578; and see, *Grosjean* v. *American Press Co.*, 297 U.S. 233, 250.

Its character as a flat license tax thus alone vitiates the levy imposed by the ordinance. While, as we show hereafter, the tax is also prohibitive (*infra*, pp. 30-34) and discriminatory (*infra*, pp. 34-38), and for these additional reasons cannot survive the First Amendment's guaranty against abridgement of the freedoms of speech, press, and peaceable assembly, it is indispensable to the effective protection of these freedoms to maintain the fundamental position that their exercise under no circumstances provides a valid taxable event. *Grosjean* v. *American Press Co.*, 297 U.S. 233. "The power to tax the exercise of a privilege is the power to control or suppress its enjoyment." *Murdock* v. *Pennsylvania*, *supra*, 319 U.S. at 112. "For one reason among others, if the state may tax the privilege it may fix the rate of tax and, through the tax, control or suppress the activity which it taxes." *Jones* v. *Opelika*, *supra*, 316 U.S. at 607. It is no answer to say that the tax rate must constitutionally stop short of prohibition, discrimination, or undue burden. Once granted that the taxing power can within this field be validly exerted to some degree, there is little if any assurance of effective safeguards. *Cf. Grosjean* v. *American Press Co.*, *supra*, at 245.

Evidence of the reality of the danger already exists. An ordinance of the City of Carrollton, Georgia, provided that, in order for a person to act as a "labor union agent, labor union promoter, labor union or-

ganizer," the person was required to secure a license and to pay an annual tax of $1,000 plus $100 for each day of activity.[16] On appeal from the refusal of a United States District Court to exercise equitable jurisdiction in a suit brought to enjoin enforcement of the ordinance, the Court of Appeals for the Fifth Circuit remanded the case to the District Court to determine the merits of the complaint. *Denton* v. *City of Carrollton*, 235 F. 2d 481. The municipality thereafter repealed the ordinance, enacted another in its stead, this time eliminating the daily tax but retaining the $1,000 annual tax.[17] The complaint was then amended to challenge the validity of this ordinance. The District Court again declined to exercise equitable jurisdiction, basing its determination in large part upon the difference in the tax imposed by the new ordinance. *Denton* v. *City of Carrollton*, 32 CCH Labor Cases ¶ 70,850 (N.D. Ga., July 16, 1957).

This concretely illustrates the danger. Unless such taxes, imposed on the exercise of First Amendment rights, are invalidated as flat license taxes regardless of amount, we may confidently expect that litigation, when successful, will result in nothing but repeal or invalidation of the particular ordinance, its prompt reenactment at a reduced rate, and renewed litigation of the new rate. There will be progressive reductions in the tax rates, a merry-go-round of litigation as suits seek to keep pace with experimentation with the rates, and erosion of First Amendment rights in the process.

Accordingly, the ordinance in this case is invalid, both because it conditions the exercise of First Amend-

---

[16] Carrollton, Georgia, Nov. 12, 1954, Minute Book 8, Page 477.

[17] Carrollton, Georgia, Oct. 5, 1956, Minute Book 9, Page 139.

ment rights upon securing a permit which is within the discretion of the municipality to grant or withhold, and because it imposes a flat license tax on the exercise of such rights.[18]

---

[18] In this Court, as in the court below, appellee may attempt to defend the constitutionality of the ordinance upon the ground that "One of the greatest menaces to our national government is the subversive organizations existing in our midst," and that "An ordinance such as the one here in question, enabling every community to be informed with respect to the character of the organizers and some knowledge of the nature of the organization, will go a long ways towards halting the inroads of subversive organizations." We need not pause to consider by what means, if at all (cf. *Pennsylvania* v. *Nelson*, 350 U.S. 497), a municipality may constitutionally accomplish the stated purpose. It is enough for the present that where a condition exists within the power of the legislature to regulate, but where in conjunction with that condition there also exists occasion for the exercise of First Amendment rights, any legislation directed to the condition must be "narrowly drawn to cover the precise situation giving rise to the danger." *Thornhill* v. *Alabama*, 310 U.S. 88, 105. "In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Cantwell* v. *Connecticut*, 310 U.S. 296, 304. It will not do, as appellee here would, to associate the exercise of First Amendment rights with a condition subject to regulation in order to justify engulfment of the whole. See cases cited *supra*, pp. 19-20, 23. "Surely, this is to burn the house in order to roast the pig." *Butler* v. *Michigan*, 352 U.S. 380, 383.

We cannot forbear mentioning, moreover, that justification of the instant ordinance as a regulation of subversive activity seems the sheerest rationalization, however fashionable. How its serves that end to tax solicitation of membership in *any* organization by paid organizers or officers passes understanding. And if subversive activity is the relevant consideration, we should suppose that at the least the ordinance would have spelled out that factor as the criterion by which to determine whether to grant or withhold a permit, rather than to permit the Mayor and the City Council to roam wholly at large.

II. THE ORDINANCE ABRIDGES THE "FUNDAMENTAL RIGHT" OF EMPLOYEES TO ENGAGE IN ORGANIZATIONAL ACTIVITY WHICH THE FOURTEENTH AMENDMENT SAFEGUARDS AGAINST STATE DEPRIVATION WITHOUT DUE PROCESS OF LAW.

Quite aside from the constitutional protection which solicitation of membership in a labor organization enjoys because of its First Amendment attributes, it derives additional protection from the due process provisions of the Constitution. Evaluated in terms of due process, no less than in the light of the First Amendment, the instant ordinance cannot stand.

The right of employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and otherwise to engage in concerted activity for mutual aid or protection, is a "fundamental right" which exists independently of statutory conferment. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33-34; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 263-264; *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 259. It is safeguarded by the Fourteenth Amendment against state deprivation without due process of law. In addition to the reasons already discussed under the heading of speech, press, and assembly—which in the context of this case establish lack of due process as well—the ordinance in this case offends due process in at least two further respects:

1. The ordinance restricts the right to engage in organizational activity to those persons, firms or organizations whom the Mayor and the City Council in their uncontrolled discretion and without any standards deem suitable. The constitutional vice of this re-

striction has been lucidly stated by the California Supreme Court in *In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 719:

> . . . on the face of the ordinance the indefinite standards which it enunciates provide a mechanism for the deprival of constitutional rights, not only on the basis of the guarantees applicable to free speech but also on the basis of those protecting the right to engage in lawful fashion in a lawful activity . . . [T]he council members in the exercise of their power might very conceivably conclude that because of an applicant's labor union affiliations or because of his attitude upon controversial labor issues he did not have the prescribed qualities. It is entirely possible that on occasion a majority of the council might be members of a rival labor union or they might be employers engaged in a controversy with the union represented by the applicant. Certainly the standard provided by section 6 of the Redding ordinance is entirely subjective. Each council member is left to determine in his own mind what is "likely" to be the future conduct of the applicant. The character or extent of showing necessary to satisfy the council that the applicant is of good moral character and will not resort to the activities mentioned is not set forth. Satisfaction may be circumscribed by individual whim, caprice, or personal prejudice.

It is plain that the "power given" to the Mayor and City Council of Baxley "is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint." *Yick Wo* v. *Hopkins*, 118 U.S. 356, 366-367. Within our scheme of government there is no "room for the play and action of purely personal and arbitrary power." *Id.* at 370. To engage in organizational activity cannot be a "funda-

mental right" and at the same time subject to governmental constraint which knows no bounds except the individual official's sense of self-restraint.

2. The tax imposed by the ordinance, apart from its invalidity as a flat license tax regardless of amount, is so exorbitant that it has the effect of prohibiting solicitation of members by all persons who are paid for the work, whether employed at it full or part-time, and by all officers of the organization, whether paid or not. Directed thus at those who are the effective exponents of the organization, the ordinance requires of each of them a $2,000 annual tax plus an additional $500 for each member obtained.

The $2,000 annual tax, even if its payment were not required of more than one individual, would alone suppress his engagement in solicitation.[19] But it cannot be so confined. An effective organizational campaign ordinarily requires more than one paid organizer or officer. In this case there were two (*supra*, p. 8). Thus the annual tax must be multiplied by the number of such persons who participate in the campaign in the particular community. It does not stop even there. "It is common knowledge that many of the larger industrial plants . . . are so situated that they draw workers from as many as five or six or more cities." *In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 722. Organizers and officers may thus be required to move

[19] The exorbitant nature of this tax is illustrated by the fact that before a *federal* income tax in the amount of $2,000 is payable, even a single person, who does not qualify as a head of a household, must have an adjusted gross income of at least $9,685; a married person with two children filing a joint return must have an adjusted gross income of at least $12,630.

from city to city in any one campaign, and are certainly required to be itinerant where they are engaged in more than one campaign, as they frequently are. Each city may enact a similar tax.[20] Indeed, the evi-

---

[20] A random search has uncovered numerous ordinances of the type in this case. Indications are that systematic inquiry would disclose a great many more.

Four ordinances have been found which are indentical to the instant ordinance except for variations in the tax in three and no tax in the fourth. Madison, Florida, Ordinance No. 40, Jan. 24, 1956 ("$300.00 per year, and $25.00 for each member"; invalidated in *Pittman* v. *City of Madison*, 38 LRRM 2567 (Fla. Cir. Ct., July 14, 1956)); Hazlehurst, Jeff Davis County, Georgia, Aug. 5, 1952, Minute Book 4, Page 2 ("$5000.00 per year"); Halifax County, Virginia, Aug. 6, 1956, Minute Book, Page 38 (no tax); Guin, Alabama, May 16, 1955 ($1,000 plus $25 for each member).

Nine have been found which differ in style but not in purport from the instant ordinance; in each the issuance of a license is discretionary and a tax is imposed. Carrollton, Georgia, Nov. 12, 1954, Minute Book 8, Page 477 ($1,000 tax plus $100 for each day of activity. In *Denton* v. *City of Carrollton*, 235 F. 2d 481, the Court of Appeals for the Fifth Circuit remanded the case to the District Court to hear the merits of a complaint challenging the validity of this ordinance. After the remand, the ordinance was repealed, another enacted in its stead, the new ordinance retaining the $1,000 annual tax but eliminating the daily tax. Oct. 5, 1956, Minute Book 9, Page 139); Milledgeville, Georgia ($5,000 annual tax; invalidated in *Starnes* v. *City of Milledgeville*, 15 LLRM 526 (Ga. Super. Ct., Aug. 29, 1944)); Dublin Georgia, April 19, 1956 ($2,500 annual tax; this ordinance also requires an oath forswearing, *inter alia*, communism and belief "in the overthrowing of the municipal or state laws in regard to segregation"); Camilla, Georgia, May 19, 1947, City Code, Section 424, as amended ($1,500 annual tax); Senatobia, Tate County, Mississippi, April 3, 1956 ($1,000 annual tax); Eupora, Webster County, Mississippi, Sept. 4, 1956, Minute Book 9, Pages 167-168 ($1,000 annual tax); Canton, Mississippi, July 3, 1956 ($1,000 annual tax); Newnan, Georgia, May 21, 1956 ($5,000 annual tax,

dence is mounting of a growing tendency by municipal and county governments to impose such taxes (see note 20). The cumulative effect is obviously prohibitive. *Murdock* v. *Pennsylvania*, 319 U.S. 105, 115; *In re Porterfield, supra*, 168 P. 2d at 722. The record in this case shows that the working force is drawn from at least two cities, Baxley and Hazlehurst (*supra*, p. 9). Hazlehurst has an ordinance virtually identical to

---

plus oath as in Dublin ordinance above); Ashburn, Georgia, Ordinance No. 373, April 5, 1956 ($1,500 annual tax).

The tendency of such ordinances to cluster is illustrated by the three Mississippi ordinances. Each ordinance is identical in wording, enacted within a five-month period, and the cities are all located in Mississippi. This clustering tendency is also markedly illustrated by nine county-wide ordinances enacted in South Carolina, eight of which were adopted within the space of four months from April to July 1957, after this Court noted probable jurisdiction in this case. Barnwell County, South Carolina, Act 997, L. 1956, approved and effective April 5, 1956; Abbeville County, South Carolina, Act 248, L. 1957, approved and effective April 4, 1957; Florence County, South Carolina, Act 340, L. 1957, approved and effective April 27, 1957; Edgeville County, Act 537, L. 1957, approved June 14, 1957, and effective July 4, 1957; Kershaw County, Act 689, L. 1957, approved and effective July 16, 1957; Lee County, Act 477, L. 1957, effective July 5, 1957; Marlboro County, Act 484, L. 1957, effective July 5, 1957; McCormick County, Act 605, L. 1957, approved July 10, 1957, effective July 30, 1957; Williamsburg County, Act 478, L. 1957, effective July 5, 1957. The first cited ordinance is reported in full, and the other eight are summarized, in CCH Labor Law Reporter, South Carolina, ¶ 42,001. Each ordinance conditions solicitation of union membership upon securing a permit, good for sixty days only "after which time it must be renewed if so desired by the applicant." Issuance and revocation of the permit are conditioned as follows:

> The Board of Managers shall have power to revoke any permit upon a showing that the applicant made false statements in obtaining the permit or for any other good and sufficient cause found to exist. The Board shall have power

Baxley's except that the annual tax is $5,000.[21] Appellant would therefore be required to pay an annual tax of at least $7,000, if the ordinances be valid. Finally, the additional tax of $500 for each member obtained without more prohibits solicitation. In this case the weekly dues required of a member are 64 cents, payable only if the plant is organized (*supra*, p. 9). At

---

to refuse to issue a permit for any just reason and for the peace and good order of the citizens of Barnwell County. [No tax is imposed.]

Other ordinances impose a tax, some coupled with a registration requirement which may or may not have discretionary elements. Bainbridge, Georgia, April 21, 1953 ($500 annual tax on "Labor Agents" plus registration required for a permit); Madison, Georgia, July 30, 1946 ("$100.00 for the privilege of soliciting membership in, or organizing such [Labor] Unions"); Marianna, Florida, May 9, 1955 ($750 tax on a "Labor Organizer"); Dothan, Alabama, Ordinance No. 1862, Oct. 11, 1955 ("Labor Union Organizers, $50.00"); Russellville, Kentucky, May 8, 1956 ($250 tax on "labor organizer and promoter" and $100 tax on "labor solicitor"; tax required to obtain a license good for the period from issuance to succeeding April 30th; license will issue "if the application gives correctly the information required"; license revocable if the application contains "false information" or the licensee is convicted of a felony; invalidated in *United Steelworkers* v. *Fuqua*, 40 LRRM 2241 (D.C.W.D. Ky., June 10, 1957)); Cullman, Alabama, Ordinance No. 461, June 24, 1957 ("initial license fee" of $750, plus information required including whether applicant has been convicted of a felony, its nature, and whether the applicant is or has been a member of the Communist Party or an affiliated organization).

Many of the ordinances also contain an age and residence requirement. Typical is the Dublin ordinance, paragraph 3 above, which provides that "no person shall be granted a license . . . unless said applicant is over 21 years of age; of good moral character; and shall have been a resident of the City of Dublin for a period of more than five years. . . ."

[21] See paragraph 2 of preceding note.

this rate, a person would have to be a dues-paying member for 15 years before the initial $500 outlay were recovered, without counting the intervening cost of providing service for that member.

Solicitation of members is to a union "what breathing is to a human being." *In re Porterfield, supra,* 168 P. 2d at 722. To prohibit it, as this tax effectively does, is to kill unionization. "The power to tax is not the power to destroy while this court sits." Mr. Justice Holmes in *Panhandle Oil Co.* v. *Mississippi,* 277 U.S. 218, 223.

III. THE TAX IMPOSED BY THE ORDINANCE IS BASED ON A DISCRIMINATORY CLASSIFICATION AND THEREFORE OFFENDS THE CONSTITUTIONAL GUARANTY OF EQUAL PROTECTION OF THE LAWS.

In addition to the invalidity of the tax for the separate reasons that it is a flat license tax and if is prohibitive, the tax imposed by the ordinance is also discriminatory. While a "state has a broad discretion in classification," the "constitutional guaranty of equal protection of the laws is interposed against discriminations that are entirely arbitrary." *Smith* v. *Cahoon,* 283 U.S. 553, 566-567.[22] Classification in exercising the power to tax, as in any other exertion of governmental authority, must be " 'based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' " *Quaker City Cab Co.* v. *Pennsylvania,* 277 U.S. 389, 400. The tax imposed by the ordinance in this case is discriminatory in this sense in at least two respects:

---

[22] See also, *Skinner* v. *Oklahoma,* 316 U.S. 535; *Hale* v. *Bimco Trading Inc.,* 306 U.S. 375; *Morey* v. *Doud,* 1 L. Ed. 2d 1485.

1. The annual tax of $2,000 plus $500 for each member obtained is grossly in excess of taxes which the City of Baxley imposes on business enterprises engaged in purely commercial activity for profit. The Clerk of the City Council of Baxley testified as follows concerning "a schedule of license that are charged by the City of Baxley for various businesses" (R. 23):

> The amount of yearly license required for automobile accessories, wholesale and retail, is $100. $150 is the amount charged a bank or banker. For a billiard or pool room, the first table is $100, and $10 each additional table. The book or magazine agent is charged $10 per day. $2 per day is charged for a bill poster and bill cards, and sample advertising matter. $50 is charged for a cafe or restaurant. A carnival tent show is charged $100 per day with the consent of the Mayor and Council. The amount charged to merchants with general and specific stock is broken down into terms of merchandise and it is based on inventory. $150 is charged from $10,000 to $20,000. $100 is charged from $5,000 to $10,000. The regular moving picture show is charged $200 per year.

The vice of the discriminatory levy imposed by the ordinance is emphasized by the force of the observation that "'a labor union is a combination of working men formed, not for the conduct of a lawful business, trade, or profession, for the pecuniary gain of its members; but for the purpose of securing, by united action, the most favorable wages and conditions of labor, and otherwise improving their economic and social status.'" *Deeney* v. *Hotel & Office Employees' Union*, 57 Cal. App. 2d 1023, 1026-1027, 134 P. 2d 328, 330.

2. The ordinance requires a permit of all who would solicit members. But it imposes the tax only on those

persons who are paid for the work, whether employed at it full or part-time, and by all officers of the organization, whether paid or not. But there is nothing either in their compensation or in what they do that provides a rational basis for this differentiation. The tax imposed bears no conceivable relationship to the compensation received. And to base the exaction on what these persons do is to identify the very reason that the classification is invalid.

(a) *Compensation*: That the differentiation cannot rationally rest upon remuneration is evident from the fact that the tax is laid upon solicitation by an officer who is paid nothing. It is also evident from the fact that the tax is laid upon solicitation by a person who receives "a fee *of any sort*" for it. A tax cannot be justified on the basis of compensation when it is imposed indiscriminately on those who are paid nothing or a pittance. Nor is the situation any better when consideration is confined to the full-time paid officer or paid organizer. From no others engaged in full-time gainful employment does the City of Baxley require an annual tax of $2,000. Compensation therefore does not furnish a legitimate distinction.

(b) *What they do*: When we consider what the individuals do of whom the City of Baxley requires an annual tax, we strike to the heart of the reason that they are singled out for taxation, a reason, however, which but demonstrates the invalidity of the classification.

In many local unions, if not indeed in most, the officers of the organization are unpaid, or at best receive nominal sums. Their source of livelihood customarily comes from working full-time in the same plant with

the employees whom the local union represents or seeks to organize. Of course no local union can exist without officers, and a continuing function of such officers is solicitation of members, if for no other reason than that personnel turnover in the plant requires recruitment of the newcomers in order for the organization to remain viable. To tax officers because they solicit members is thus to make it impossible for the union to exist and function. It is, indeed, to make it impossible for the union even to come into being. For while initial organizational impetus may arise among the employees themselves, it very soon requires direction and leadership in order to bring it to fruition. At the moment when, to emerge from embryonic organization, the employees form a union and elect officers, the municipality steps in to exact its tax. To tax the officers at that stage is to still the organization at birth.

The invalidity of the classification is just as apparent when consideration is confined to the full-time paid organizer. "It is axiomatic to say that without members a union can not function. In the development and apposition of a trade union the paid organizer usually has the duty to widely and systematically solicit workers for membership. A tax on solicitation of memberships thus tends to smother the workers' united existence." *In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706, 722.[23] To single out the paid organizer for taxation,

[23] At pp. 29-30 of its brief in *National Labor Relations Board* v. *Babcock and Wilcox Company*, 351 U.S. 105 (No. 250, Oct. Term, 1955), the NLRB observed that:

> Both before and after the passage of the Act it has, of course, been common practice for employees to avail themselves of the services of outside organizers. [Citations.] The necessity for invoking such assistance, particularly in the

because it is his job to solicit membership, is thus to state precisely the reason why the tax cannot stand. What appellee has done is to select for taxation those who are the effective exponents of organization and without whom it cannot exist.

IV. PROHIBITION OF SOLICITATION OF MEMBERS WITHOUT A PERMIT AND TAXATION OF SOLICITATION OF MEMBERS CONFLICT WITH THE RIGHTS GUARANTEED EMPLOYEES BY SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT.

Section 7 of the National Labor Relations Act provides that "Employees shall have the right to self-

---

light of modern industrial conditions, requires little elaboration. Today, as everyone knows, it is commonly true that effective union organization can be best promoted by persons who devote their full time and knowledge to the task. Cf. H. Rep. No. 1147, 74th Cong., 1st Sess., p. 10. [Citations.] Union representatives who specialize in organization are experienced in organizing techniques and familiar with the complexities of present day labor law. Formal training in organization methods is increasingly an indispensable prerequisite to organizing work. Unions have more and more drawn upon colleges and graduate and law schools for the knowledge and skills required by ambitious organizing campaigns. In addition, the labor movement has developed its own training schools for organizers comparable to the salesmanship training courses of industry and the programs of business colleges and graduate schools. [Citations.] Employees who are unable to tap such organizational know-how gained from long experience or specialized training are manifestly handicapped in exercising their statutory right to self-organization for purposes of collective bargaining. And to the extent that otherwise appropriate channels of communication between employees and such organizers are blocked, as here, the employees' statutory rights are diminished.

The validity of this observation is unaffected by the rejection of the particular position that the NLRB advanced in that case.

organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." The ordinance in this case conflicts with the National Act in numerous respects (*United Steelworkers* v. *Fuqua*, 40 LRRM 2241 (D.C. W.D. Ky., June 10, 1957)):

1. In *National Labor Relations Board* v. *Babcock and Wilcox Company*, 351 U.S. 105, this Court held that an employer may, if he does not discriminate, close his property to non-employee organizers, but only "if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message" (*id.* at 112), "such as [by] mail, telephones, as well as [at] the homes of the workers . . ." (*id.* at 107). The premise of the decision is that the communications media must be kept open in order to realize the rights conferred by the National Act. As stated in the Senate Report on Violations of Free Speech and Rights of Labor (S. Rep. No. 1150, 77th Cong., 2d Sess., Part 1, 4-5):

> The right of self-organization and collective bargaining is a complex whole, embracing the various elements of meetings, speeches, peaceful picketing, the printing and distribution of pamphlets, news and argument, all of which, however, are traceable to the fundamental liberties of expression and assembly. So compounded, the right of self-organization and collective bargaining is fundamental, being one phase of the process of free association essential to the democratic way of life.

The ordinance, however, closes every means of communication to every one save only as the Mayor and

the City Council choose to open them to those they approve. It clogs the very interchange which the National Act contemplates shall be free. The "rights guaranteed to employees by the act include full freedom to receive aid, advice, and information from others, concerning those rights and their enjoyment." *Harlan Fuel Co.*, 8 NLRB 25, 32. These rights cannot be realized so long as the ordinance stands. *United Steelworkers* v. *Fuqua*, 40 LRRM 2241, 2244 (D.C. W.D. Ky., June 10, 1957).

2. The soliciting of membership in a labor organization is the preliminary but indispensable step to the designation of the union as the bargaining representative by a majority of employees in the appropriate unit. The ordinance undercuts the "full freedom"[24] of employees to make their selection by confining the appeals to which they may listen to those made by "persons, firms or organizations," if any, whom the Mayor and the City Council approve. *United Steelworkers* v. *Fuqua*, *supra*. But "Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon that agent's qualificatons." *Hill* v. *Florida*, 325 U.S. 538, 541. See also, *United Mine Workers* v. *Arkansas Oak Flooring Company*, 351 U.S. 62.

As the record shows (*supra*, p. 10), the ultimate object of the solicitation in this case was to "have enough cards signed to petition for an election" by the National Labor Relations Board. The incompatibility of the ordinance's restrictions with attainment of that

[24] Title I, sec. 1, para. 5, Labor Management Relations Act, 1947.

end was shown by this Court when it discussed the incidents of an "election for collective bargaining agent . . . ordered by national authority pursuant to the guaranties of national law" (*Thomas* v. *Collins*, 323 U.S. 516, 533-534):

> Those guaranties include the workers' right to organize freely for collective bargaining. And this comprehends whatever may be appropriate and lawful to accomplish and maintain such organization. It included, in this case, the right to designate [the Union] . . . or any other, . . . as the employees' representative. It included their right fully and freely to discuss and be informed concerning this choice, privately and in public assembly. Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents . . . and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice.

Whether the election has already been ordered, as in *Thomas* v. *Collins*, or is still being sought, as here, the evil of censorship is the same; in either case, it stands athwart the election processes and a free choice.

3. "Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.'" *Hill* v. *Florida*, 325 U.S. 538, 542; see also *National Labor Relations Board* v. *Hearst Publications*, 322 U.S. 111, 123-124. If the ordinances of the type in this case are permitted to stand, the erosion from 48 state enactments will seem as nothing compared to the crazy quilt which would be produced by the multiplicity of ordinances spawned by town after town or county after county within a state. See *Nippert* v. *Richmond*,

327 U.S. 416, 428, n. 19, 429-430. Workers employed in a single plant, but living in different neighboring towns, would have their choice circumscribed by as many of the different views as the different city fathers entertained; as in this case (*supra*, p. 32), Baxley might bar an organization which Hazlehurst found acceptable.

To permit Balkanization in the establishment of the standards under which the solicitation of membership in labor unions may be conducted is to strike at the very idea of union organization. To render it "at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild." *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U.S. 184, 209. And so, "elimination of price competition based on differences in labor standards is the objective of any national labor organization." *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 503.

These truisms have gained rather than lost their relevance with the passage of time. Today the market for goods is increasingly nationwide and industry is increasingly mobile. Places of manufacture change, either because an existing establishment migrates to a new territory, or because, without abandoning the old plant, new installations are constructed in hitherto undeveloped regions. As pastoral areas are industrialized, sectional differences in labor standards develop, with the standards in the new and unorganized place

commonly lower than those which prevail in the older and unionized place. To protect and maintain the higher labor standards, union organization must extend to the new regions to bring them into alignment with the old. That extension is accomplished by having the labor union solicit the membership of the new worker in the new region; the union migrates with the industry; in substance, the older worker in the older region through his union seeks to join hands with the newer worker in the newer region for their common betterment.

The National Labor Relations Act guarantees the right to attempt, and provides the means for achieving, such rapprochement. Ordinances of the type in this case, however, have the necessary effect—indeed, they are designed for the very purpose—of throwing a barrier about the new place to prevent union entry into it.[25] The National Act and such ordinances cannot stand together.

---

[25] It is no accident that such ordinances are products of small towns or rural counties, with no tradition or appreciation of union organization and the necessity for it, and in which "legislative action is not likely to be subjected to those political restraints" which would prevent such retrogression (*cf.*, *South Carolina State Highway Department* v. *Barnwell Brothers*, 303 U.S. 177, 185, n. 2; *Edwards* v. *California*, 314 U.S. 160, 174). Taken in the order in which the ordinances are listed at pp. 31-33, *supra*, the populations shown by the 1950 Census are as follows: Baxley, Georgia, 3,409; Madison, Florida, 3,150; Hazlehurst, Georgia, 2,687; Halifax County, Virginia, 41,442; Guin, Alabama, 1,137; Carrollton, Georgia, 7,753; Milledgeville, Georgia, 8,835; Dublin, Georgia, 10,232; Camilla, Georgia, 3,745; Senatobia, Missouri, 2,108; Eupora, Mississippi, 1,338; Canton, Mississippi, 7,048; Newnan, Georgia, 8,218; Ashburn, Georgia, 2,918; Barnwell County, South Carolina, 17,266; Abbeville County, South Carolina, 22,456; Florence County, South Carolina, 79,710; Edgeville County, South

4. The tax imposed by the ordinance is levied for engaging in the solicitation of membership in a labor organization. The activity subjected to the tax is conduct protected by the National Labor Relations Act. Every reason which makes this tax an unconstitutional exaction offensive to the First and Fourteenth Amendments (*supra*, pp. 22-26, 30-38) likewise establishes that it is incompatible with the federal statute. Its character as a flat license tax, as well as its prohibitive and discriminatory features, vitiates it when measured by the protection conferred by the statute no less than when gauged by the safeguards guaranteed by the Constitution.

There is, however, a significant element added because a source of right protecting solicitation of membership in a labor organization is the statute. For the activity is safeguarded by the statute pursuant to the exercise by Congress of its power to regulate interstate commerce. A state may not burden such activity by a fixed-sum license tax.

When this Court invalidated the imposition of a flat license tax on the exercise of First Amendment rights, it drew strong support for its conclusion from the fact that it is "the type of flat tax which, when applied to interstate commerce, has repeatedly been deemed by this Court to be prohibited by the commerce clause." *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on

---

Carolina, 16,591; Kershaw County, South Carolina, 32,287; Lee County, South Carolina, 23,173; Marlboro County, South Carolina, 31,766; McCormick County, South Carolina, 9,577; Williamsburg County, South Carolina, 43,807; Bainbridge, Georgia, 7,562; Marianna, Florida, 5,845; Madison, Georgia, 2,489; Dothan, Alabama, 28,820; Russellville, Kentucky, 4,529; Cullman, Alabama, 7,523.

rehearing the dissenting opinions in *s. c.*, 316 U.S. 584, 609. A state "may not exact a license tax for the privilege of carrying on interstate commerce *McGoldrick* v. *Berwind-White Coal Min. Co.*, 309 U.S. 33, 56-58), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. *Id.* 309 U.S. p. 47, and cases cited." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 113. And so, from *Robbins* v. *Shelby County Taxing District*, 120 U.S. 489, through *Nippert* v. *Richmond*, 327 U.S. 416, to *West Point Wholesale Grocery Co.* v. *Opelika*, 354 U.S. 390, this Court has invalidated flat license taxes imposed on the business of soliciting orders for the purchase of goods to be shipped interstate. For the character of such a tax—fixed in amount, unrelated to the extent of the activity or the receipts to be derived from it, and unapportioned in any way—makes it an undue and discriminatory burden on interstate commerce, both in its actual and potential impact on it. It is, therefore, incompatible with the power of Congress to regulate commerce among the states. For that power "is necessarily exclusive whenever the subjects of it are national in their character, or admit only of one uniform system, or plan of regulation." *Robbins* v. *Shelby County Taxing District*, 120 U.S. 489, 492. A flat license tax imposed by a state cannot stand if the taxed activity is of the kind where "regulations should be based on a uniform system applicable to the whole country, and not left to the varied, discordant and retaliatory enactments of forty different states." *Id.* at 498. And the mischief is "magnified many times by . . . municipal taxes laid in succession" by town after town. *Nippert* v. *Richmond*, 327 U.S. 416, 429-430.

As a state may not burden the solicitation of orders for the purchase of goods to be shipped interstate with a fixed-sum license tax, it follows *a fortiori* that a state may not burden solicitation of membership in a labor organization with a fixed-sum license tax. For Congress has cast the mantle of its protection over the latter activity in pursuance of its power to regulate interstate commerce. While the solicitation of membership does not, like the solicitation of orders, contemplate an interstate movement of goods, that factor is relevant only if the freedom from restraint is predicated upon operation of the commerce clause "by its own force" (*Freeman* v. *Hewit*, 329 U.S. 249, 252); but where, as here, by "implementing legislation" pursuant to the commerce clause Congress has chosen "to enact a nation-wide rule," the two situations are then in *pari materia* (*Id.* at 252-253). In both situations, the activity in question must be free from the burdens of a fixed-sum license tax, for "the subjects of it are national in their character, or admit of only one uniform system, or plan of regulation." *Robbins* v. *Shelby County Taxing District*, 120 U.S. 489, 492.

Solicitation of membership in a labor organization is protected by "federal legislation, administered by a national agency, intended to solve a national problem on a national scale." *National Labor Relations Board* v. *Hearst Publications*, 322 U.S. 111, 123. It is a right which cannot exist, equal in its availability throughout the Nation, if its exercise is subject to the hobbling effect of local fixed-sum license taxes. Depending on the tax rate in any particular city, the right may be suppressed altogether, or at the least it may be restricted to those who can afford the luxury of exercising it. As between communities, exercise of the right may

be free to the inhabitants in one place, expensive in another, and prohibitive in a third. It is inevitable that the national uniformity which Congress sought[26] cannot exist. *United Steelworkers* v. *Fuqua*, 40 LRRM 2241, 2244 (D.C. W.D. Ky.; June 10, 1957).

But "Congress occupied this field and closed it to state regulation." *International Union* v. *O'Brien*, 339 U.S. 454. 457. The burden of local intervention "is none the lighter and no less objectionable because it is imposed by a State under the taxing power rather than under manifestations of police power in the conventional sense." *Freeman* v. *Hewit*, 329 U.S. 249, 252-253. Taxation is, on the contrary, more ominous than regulation. *Id.* at 253-254. Where, as here, the activity protected by Congress may not be prohibited or fettered by local regulation (*United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62), it may *a fortiori* not be burdened by local imposition of a fixed-sum license tax.

---

[26] ". . . Congress has expresssed its judgment in favor of uniformity." *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 10-11.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment should be reversed.

MORRIS P. GLUSHIEN
1710 Broadway
New York 19, N. Y.

ED PEARCE
POOLE, PEARCE & HALL
1202 Candler Building
Atlanta 3, Georgia

BERNARD DUNAU
JAFFEE & DUNAU
912 Dupont Circle Building, N. W.
Washington 6, D. C.

Attorneys for Appellant.

August, 1957

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 48

ROSE STAUB, APPELLANT

v.

CITY OF BAXLEY, APPELLEE

SUPPLEMENT TO NOTE 20,
PAGE 31, OF APPELLANT'S BRIEF.

At page 31, note 20, of appellant's brief, there is a summary of numerous ordinances of the type in this case. Since the brief was filed, additional ordinances and information have been obtained. These may be summarized as follows:

1. Ordinance of Johnsonville, South Carolina, enacted February 14, 1957 (population, 616): A permit is required, good for a period of sixty days in order to solicit membership. Section IV of the ordinance provides that:

> The Town Council shall have power to revoke any permit upon the showing of false statements made by the applicant in obtaining such permit [or] for any other good and sufficient cause found by the Town Council to exist. The Council shall have power to refuse to issue any permit for any just reason and for the peace and good order of the citizens of Johnsonville, S. C.

2. Ordinance of Cuthbert, Georgia, enacted August 4, 1947 (popula-

additional ordinances and information have been obtained. These may be summarized as follows:

1. Ordinance of Johnsonville, South Carolina, enacted February 14, 1957 (population, 616): A permit is required, good for a period of sixty days, in order to solicit membership. Section IV of the ordinance provides that:

> The Town Council shall have power to revoke any permit upon the showing of false statements made by the applicant in obtaining such permit [or] for any other good and sufficient cause found by the Town Council to exist. The Council shall have power to refuse to issue any permit for any just reason and for the peace and good order of the citizens of Johnsonville, S. C.

2. Ordinance of Cuthbert, Georgia, enacted August 4, 1947 (population, 4,025): Upon the execution of an application calling for specified information, and upon the payment of a tax of $1,500, a one-year license will be issued, the license being the condition for lawfully "soliciting other persons to join or become members of a Labor Organization . . . ." The license is revocable if "it is ascertained that said license has been obtained by false allegations contained in said sworn application . . . ."

3. Ordinance No. 324, Osceola, Arkansas, enacted April 10, 1957 (population 5,006): As a condition of engaging in organizational activity on the part of "Any individual, organization or association":

> Said individual and all individuals within said organization or association shall be of good moral character. Good moral character is defined in this section to mean without previous conviction of any crime, either felony or misdemeanor. Said individ-

-1-

-1-

ual or individuals within said organization or association, before operating in the City of Osceola, at the request of the Police Department, shall be fingerprinted; so their fingerprints shall be sent to the appropriate law enforcement agency to show the good moral character of the individual or individuals.

In addition, a tax of $1,000 per day is required to be paid by "Said individual, organization or association . . . . ."

An identical ordinance, except that the tax is $500 per day, was enacted by Arcadia, Florida (Ordinance No. 561, October 7, 1957, population 4,764).

4. Ordinance of Savannah, Tennessee, enacted July 23, 1946 (population, 1,698): Before anyone may "attempt to organize any employees" a "license for so doing" must be obtained and an annual tax of $100 paid. It is further provided that "in passing upon said application [for a license] the Board of Commissioners shall be guided by the best interest of the Town of Savannah, and shall take into consideration the additional police force made necessary by the granting of said license and the effect such union or other organization will have upon the peace, quiet, morals and welfare of the Town of Savannah."

We are informed that there are about a half-dozen similar ordinances in other towns in Tennessee.

5. Ordinance No. 283 of Scottsville, Kentucky, enacted March 7, 1957 (population, 2,060), and ordinance of Cave City, Kentucky, enacted February 8, 1957 (population, 1,119), both provide that a $50 tax shall be paid by a "labor organizer and promoter" and a "labor solicitor" in order to secure a required license upon the execution of an application calling for specified information; in the case of the Scottsville ordinance the license

the Board of Commissioners shall be guided by the best interest of the Town of Savannah, and shall take into consideration the additional police force made necessary by the granting of said license and the effect such union or other organization will have upon the peace, quiet, morals and welfare of the Town of Savannah."

We are informed that there are about a half-dozen similar ordinances in other towns in Tennessee.

5. Ordinance No. 283 of Scottsville, Kentucky, enacted March 7, 1957 (population, 2,060), and ordinance of Cave City, Kentucky, enacted February 8, 1957 (population, 1,119), both provide that a $50 tax shall be paid by a "labor organizer and promoter" and a "labor solicitor" in order to secure a required license upon the execution of an application calling for specified information; in the case of the Scottsville ordinance the license is good until the succeeding July 16, and in the case of Cave City until the succeeding April 30; in both cases the license is revocable if the application contains "false information" or the licensee is convicted of a felony.

An identical ordinance, enacted by Russellville, Kentucky (population 4,529), is described in the penultimate paragraph of note 20, page 31, except that there the tax was $250 on a "labor organizer or promoter," $100 on a "labor solicitor," and the license would issue "if the application gives correctly the information required" (emphasis supplied). On November 1[illegible] 1956, a complaint was filed in the United States District Court for the

-2-

-2-

estern District of Kentucky to invalidate the Russellville ordinance. On December 4, 1956, after a hearing on November 27, 1956, upon a motion for a preliminary injunction, the Russellville ordinance was amended to reduce the tax to $25 and to delete the word "correctly." On June 10, 1957, the District Court invalidated the amended ordinance. United Steelworkers v. Fuchs, 40 LRRM 2241.

Another form of ordinance found in Kentucky is Ordinance No. 302, Falmouth, Kentucky, enacted November 12, 1956 (population, 2,186). A $2,500 annual tax is required; the Mayor and Councilmen "shall be the sole judge of the qualifications of the applicant"; and "no person shall be granted a license . . . unless said applicant is over 21 years of age; of good moral character; and shall have been a resident of the City of Falmouth for a period of five years . . . ." In addition, the applicant must take an oath forswearing inter alia communism and belief "in the overthrowing of the municipal or state laws. . . ."

Respectfully submitted,

MORRIS P. GLUSHIEN
1710 Broadway
New York 19, N.Y.

ED PEARCE
POOLE, PEARCE & HALL
1202 Candler Building
Atlanta 3, Georgia

BERNARD DUNAU
JAFFEE & DUNAU
912 Dupont Circle Building, N.W.
Washington 6, D. C.

Attorneys for Appellant.

November, 1957

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
DEC 21 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 698-48

ROSE STAUB, *Appellant*

v.

CITY OF BAXLEY, *Appellee*

On Appeal From the Court of Appeals of the State of Georgia

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

J. H. HIGHSMITH,
Baxley, Georgia,
Attorney for Appellee.

December 27, 1956.

INDEX

	Page
Statement	2
Argument	5
Appendix	9

TABLE OF AUTHORITIES

Atlantic Coast Line Rd. Co. v. *Mims*, 242 U.S. 532 (1917)	5
Harding v. *Illinois*, 196 U.S. 78 (1904)	5
Herndon v. *Georgia*, 295 U.S. 441 (1935)	5
Layton v. *Missouri*, 187 U.S. 356 (1902)	5
Nevada-California-Oregon Ry. v. *Burrus*, 244 U.S. 103 (1917)	5
Peters v. *Hobby*, 349 U.S. 331 (1955)	6
United States v. *Rumely*, 345 U.S. 41 (1953)	5
Rule 16, Revised Rules of the Supreme Court of the United States	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 602

ROSE STAUB, *Appellant*

v.

CITY OF BAXLEY, *Appellee*

On Appeal From the Court of Appeals of the State of Georgia

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

Appellee, pursuant to Rule 16(b) of the Revised Rules of the Supreme Court of the United States, moves that the appeal be dismissed or the judgment of the court below affirmed on the ground that the federal question sought to be reviewed was not properly raised, or expressly passed on and that the judgment rests on an adequate non-federal basis.

STATEMENT

Appellant was prosecuted for soliciting membership in the International Ladies' Garment Workers' Union without a permit in violation of the ordinance of the

City of Baxley which appears on pages 3-5 of her Jurisdictional Statement. She filed a plea in abatement of the prosecution, setting out as her sole defense that the ordinance was unconstitutional. The plea attacked the ordinance as a whole; it made no attack against any specific section of the nine sections contained in the ordinance. She was convicted.

She appealed the judgment of conviction to the Superior Court of Appling County, Georgia, by way of writ of certiorari as required by Georgia practice. The writ of certiorari, like the plea in abatement, attacked the ordinance as a whole and contained no attack on any specific section. The conviction was affirmed by the Superior Court without an opinion. From the judgment of the Superior Court appellant brought a writ of error to the Court of Appeals of Georgia. The Court of Appeals refused to consider or decide the constitutional question for the following reason (Jurisdictional Statement, App. p. 40):

> "It will be noted that counsel for the defendant in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole. In Anthony v. City of Atlanta, 66 Ga. App. 504, 505 (18 S. E. 2d 81), this court said: 'It is well settled that one or more sections of an ordinance may be unconstitutional and other sections constitutional; and where the allegations as to the unconstitutionality of an ordinance fail to definitely state what section of the ordinance is unconstitutional, such allegations are too indefinite to raise any question for decision as to the unconstitutionality of the ordinance. Glover v. Rome, 173 Ga. 239 (160 S. E. 249), and cit.' "

Appellant makes no claim that she did comply with this reasonable and well-established rule of Georgia practice, or that she properly and specifically defined her constitutional challenge to the ordinance. The only comment which appellant makes with respect to the above ground for the procedural decision against her is the following (Jurisdictional Statement, p. 12):

> "No contention of this character had been advanced by the City either in the Mayor's Court or in the Superior Court; no suggestion of it appears in the otherwise full answer filed by the City in the Superior Court (Tr. 51-52). A motion for rehearing was denied by the Court of Appeals and an application for certiorari was denied by the Georgia Supreme Court . . ."

The above statement is erroneous. The fact is that after prosecution of the appellant was commenced she brought a declaratory judgment proceeding in the Superior Court of Appling County to declare the ordinance invalid. In that proceeding no written briefs were filed by either party, but counsel for appellee fully argued the contention that the appellant had not properly raised the unconstitutionality of the ordinance because she had attacked the ordinance as a whole and not specific sections.

The declaratory judgment proceeding was appealed to the Supreme Court of Georgia. The question of the failure of appellant to attack specific questions was again argued in a written brief filed before the Supreme Court and in oral argument. An excerpt from the brief filed by the counsel for the City of Baxley in the Supreme Court arguing this question is incor-

porated in the statement by counsel and attached as an Appendix hereto (*infra* pp. 9-10).

After the Supreme Court had affirmed the dismissal of the appellant's declaratory judgment proceeding on the ground that the question of unconstitutionality could be raised on trial for the offense, the criminal proceeding was tried before the Mayor's Court. Again, in spite of the invocation by the City's attorney of the rule requiring specificity in the previous declaratory judgment proceeding, appellant attacked the constitutionality of the ordinance as a whole without reference to any specific section. She was convicted. She appealed to the Superior Court. When the case came on for hearing in the Superior Court, counsel agreed that no further argument was necessary. Both sides rested their case on the oral argument previously made in the declaratory judgment proceeding before the Superior Court (see letter attached to the Appendix, *infra* p. 11). As we pointed out above, in that previous argument the procedural question had been raised and fully argued. Finally, it is conceded by appellant that the same procedural question was raised by appellee before the Court of Appeals in Georgia.

To sum up, the procedural issue on which the Court of Appeals decided the case without considering the constitutionality of the ordinance was raised by appellee on every possible occasion.[1] Appellant chose to ignore it and did not seek to amend her pleadings.

---

[1] Appellant's statement quoted above that ". . . no suggestion of it [the procedural point on which the case was decided] appears in the otherwise full answer filed by the City in the Superior Court" is true but has no relevance. The answer of the Mayor under Georgia practice was solely a pleading as to the facts. It did not and was not intended to raise any points of law. Such questions under Georgia practice are properly raised on argument of counsel.

ARGUMENT

1. It is clear from the record that the Court of Appeals of Georgia decided the case on a procedural ground. This is a matter of state law. The decision therefore rests on an adequate non-federal basis. The fact that the Georgia courts declined at this stage to give effect to appellant's claimed constitutional rights because not properly raised or presented under Georgia's "established system of practice and pleading . . . is not a denial of a Federal right which this court can review", *Atlantic Coast Line Rd. Co.* v. *Mims,* 242 U. S. 532, 536-537 (1917). See also *Layton* v. *Missouri,* 187 U. S. 356, 361 (1902); *Nevada-California-Oregon Ry.* v. *Burrus,* 244 U. S. 103, 105 (1917).

The Georgia requirement of specificity with respect to constitutional claims is well established. It finds support in the traditional rule in favor of deciding serious issues of constitutionality only when properly presented and unavoidable. Compare *United States* v. *Rumely,* 345 U. S. 41 (1953). "[I]nsufficiency of the specification" of unconstitutionality is therefore an appropriate ground for the Georgia Supreme Court to decline review, as this Court has already recognized; in such a case the "federal question [is] never properly presented to the state supreme court", *Herndon* v. *Georgia,* 295 U. S. 441, 443 (1935). See also *Harding* v. *Illinois,* 196 U. S. 78, 85-87 (1904).

In such a case, where the local court justly and properly fails to decide the constitutional issue, this Court will deny review. No federal question has been raised or determined. *Atlantic Coast Line Rd. Co.* v. *Mims, supra; Layton* v. *Missouri, supra.*

2. The only reason which appellant gives to escape the application of this principle to her case is that she

was caught by surprise and had no warning that the procedural issue would be raised until the argument in the Court of Appeals. This, as we have shown, is not true. However, if it were true it would not aid appellant. Local and federal courts alike are traditionally rigorous in declining to decide constitutional questions where non-constitutional issues are decisive. Because of the delicacy of a constitutional challenge, an alternative ground may be invoked, even against the wishes of both parties. *Peters* v. *Hobby,* 349 U. S. 331 (1955).

The decisions of this Court clearly establish the rule that a constitutional question will not be decided by this Court on an appeal from a state court which has decided the case on the basis of local law or procedure. This principle applies here and for that reason the appeal should be dismissed.

3. While it may not be strictly relevant nevertheless counsel for appellee desires to point out that as a practical matter the organizational efforts of the International Ladies' Garment Workers' Union in the City of Baxley will not be unduly restrained if this appeal is dismissed. This is because counsel for appellee, who has been City Attorney for twenty years, has advised the Mayor and Council that Section VI of the ordinance requiring large payments of money by paid organizers is unconstitutional and no attempt should be made to enforce it. The fact of the matter is that no such attempt has ever been made in the past.

Therefore, if a permit is applied for, the sole question will be the responsibility and integrity of the union's representative. With respect to this issue

counsel for appellee is prepared to advise the Mayor and City Council that he has no question as to the responsibility and integrity of the appellant and the union which she represents. In the opinion of counsel the permit would have been granted without cost had the union seen fit to apply for it when it began its organization activities. He is equally confident that if a permit is sought at the present time it will be issued without cost.

The City of Baxley has not invoked or applied the ordinance of local regulation in any unreasonable fashion against organized labor or against the organizational campaigns of any other group. It does not intend to do so.

Respectfully submitted,

J. H. HIGHSMITH,
Baxley, Georgia,
Attorney for Appellee.

December 27, 1956.

APPENDIX

Statement of J. H. Highsmith

J. H. Highsmith, in support of the Motion to Dismiss, makes the following statement:

1. He is Attorney for the City of Baxley and has represented it throughout this entire proceeding. The initial hearing in this matter was before Judge Douglas F. Thomas of the Superior Court of Appling County, Georgia, on demurrer to a declaratory judgment action. No written briefs were filed but he as counsel for the city orally argued before the court that the question of constitutionality of the ordinance could not be reached because the attack was upon the ordinance as a whole and not upon specific sections.

2. On appeal from the dismissal of the declaratory judgment action he argued the same point, both in brief and oral argument, before the Supreme Court of Georgia. Relevant excerpts from the City's brief filed before the Supreme Court read as follows:

> "As above set forth the ordinance in question consists of nine sections. The petition of plaintiffs does not point out any particular section as unreasonable or unconstitutional but attacks the ordinance as a whole on such grounds. . . .
>
> "In the case of Anthony v. City of Atlanta, 66 Ga. App. 504 the defendant was convicted in the Recorder's Court of the City of Atlanta of violating Section 1 of an ordinance of the City known as the 'Beauty Shop Ordinance'. In the opinion at page 505, it is stated as follows:
>
> > 'The defendant contended before the recorder that he was not guilty and also that the ordinance was unconstitutional and unauthorized by the City's charter. However, this attack on the ordinance, as shown by the petition for certiorari, was not definitely directed against Section 1 of the ordinance, but against the ordinance as a whole. It is well settled that one or more sections of an ordinance

> may be unconstitutional and other sections constitutional; and where the allegations as to the unconstitutionality of a ordinance fail to definitely state what section of the ordinance is unconstitutional, such allegations are too indefinite to raise any question for decision as to the unconstitutionality of the ordinance.' "

The brief also cites the following cases: *Joseph* v. *Mayor and Aldermen of Milledgeville,* 97 Ga. 513; *Rooks* v. *Tindall,* 138 Ga. 863 (2); *Hazelton* v. *City of Atlanta,* 144 Ga. 775 (4).

3. When the case again came before the same judge of the Superior Court which had decided the original declaratory judgment action counsel agreed that no further argument should be made and that the case be left for decision on the same issues that had been raised in the previous argument. This is evidenced by the attached letter from Leon A. Wilson II, then counsel for appellee.

4. As appears by the record, the same question was raised in the Court of Appeals both on briefs and oral argument.

J. H. HIGHSMITH

WILSON & WILSON
ATTORNEYS AND COUNSELORS AT LAW
WILSON BUILDING - 107 ALBANY AVENUE
WAYCROSS, GEORGIA

HERBERT W. WILSON
LEON A. WILSON, II

MARION C. PRITCHARD

September 28, 1954

Mr. J. H. Highsmith
Attorney at Law
Baxley, Georgia

Re: Staub, et al.

Dear Jap:

This will acknowledge receipt of your letter of the 27th regarding answer filed in certiorari of above cases.

Of course, it is perfectly agreeable with us for you to prepare the answer for the Mayor, and in the event that you think it necessary, please prepare a short stipulation to that effect which we will execute before proceeding with the case. As you know, we are always willing to waive technicalities, if it will make the job easier.

I agree that your answer renders only the decision of law necessary. Since we have argued the law applicable to the case at great length in the recently affirmed case, I see no reason to subject the court to the same thing again. We will, of course, insist upon our position, but will allow the Judge to enter judgment in accordance with his previous decision, and will not expect to argue the case.

I plan to appear on the first day of your October Term. If this is not convenient, please let me know and I will meet at any time you desire.

With kind personal regards, I am,

Very truly yours,

LEON A. WILSON II

23

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 23 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 48.

ROSE STAUB,
Appellant,

v.

CITY OF BAXLEY,
Appellee.

On Appeal from the Court of Appeals of the State of Georgia.

BRIEF FOR THE APPELLEE.

J. H. HIGHSMITH,
Baxley, Georgia,
Attorney for City of Baxley.

INDEX.

	Page
Questions presented	1
Statement of facts	2
Jurisdiction	4
Summary of argument	5
Constitutionality of the ordinance	5
License fee not involved	8
No application filed	8
The one question	9
Appendix—Charter City of Baxley	13

Cases Cited.

Bratton v. Chandler, 260 U. S. 110	7
Collins v. State of Texas, 223 U. S. 228	7
Dent v. State of West Virginia, 129 U. S. 114	7
Fox River Paper Co. v. Railroad Commission, 274 U. S. 651	5
Graves v. State of Minnesota, 272 U. S. 425	7
Griffin v. City of Albany, 88 Ga. App. 229	3
Grundling v. Chicago, 177 U. S. 183	8
Hagan John v. Lewis Paulin, 231 U. S. 583	5
LaTournette v. McMaster, 248 U. S. 465	7
Leroy Brazee v. State of Mich., 241 U. S. 340	7
Payne v. State of Kansas, 248 U. S. 112	7
Thomas v. Collins, 323 U. S. 516	9, 10

Miscellaneous.

Time Magazine, August 19, 1957, page 11	8

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 48.

ROSE STAUB,
Appellant,

v.

CITY OF BAXLEY,
Appellee.

On Appeal from the Court of Appeals of the State of Georgia.

BRIEF FOR THE APPELLEE.

QUESTIONS PRESENTED.

1. Whether the failure of the State Court to pass on the validity of the municipal ordinance in question was based on adequate non-Federal grounds.

2. Whether a municipality may by ordinance require a person following occupation of organizer to file application for and obtain a permit prior to selling memberships in an organization requiring the payment of dues. (In present instance, a labor union.)

STATEMENT OF FACTS.

The municipal ordinance in question adopted by the City of Baxley in 1949, consists of 9 separate, distinct sections (R. 9-11). The sections provide in substance:

Section 1. Application to Mayor and Council for permit prior to soliciting among citizens of Baxley for memberships in an organization requiring payment of dues by its members.

Section 2. Information concerning the applicant and the nature of the organization.

Section 3. The manner of presentation and a hearing.

Section 4. Consideration by Mayor and Council.

Section 5. Granting or refusing of application to be determined by Mayor and Council after hearing.

Section 6. Payment of license fee in certain instances.

Section 7. Penalty for violation.

Section 8. Repeals conflicting ordinances.

Section 9. Provides the invalidity of one section will not void remaining sections.

By its charter the City of Baxley is vested with authority to regulate all occupations and callings within its municipal limits and to enact such ordinances, by-laws, rules and regulations its discretion may be necessary for the good, order, peace, health, prosperity and security of the City and its citizens. (Applicable sections of charter of the City of Baxley, Appendix p. 13).

Appellant on the 19th day of February, 1954, came to the City of Baxley seeking to sell memberships in International Ladies' Garment Workers' Union, an organization that requires its members to pay dues. On this ques-

tion W. A. Schuman, Chief of Police of the City of Baxley, at trial for violation of the ordinance, testified: "I talked with Rose Staub. She told me what she was doing in the City of Baxley at that time. At first she denied it but then she showed me her card for International Ladies' Garment Workers' Union, then told me what she was doing, both of them. She said she was employed by that organization. Both of them said they were soliciting members for that organization in Baxley" (R. 16).

Sylvia Dixon testified: "They asked those present to join the union. They told us that the dues would be 64¢ a week. They stated they had membership cards. They offered us the cards."

Catherine Taylor testified: "They asked me to become a member of the union . . . at that meeting they (Rose Staub and Mamie Merritt) told us the dues would be 64¢ a week. They stated that they were to be paid four weeks in advance if we joined. They said they had membership cards there. **They offered to give us membership cards upon the payment of the[1] amount stated**" (R. 20).

Rose Staub refused to file an application for a permit as required by the ordinance and was tried in Mayor's Court of the City of Baxley for a violation of the ordinance. She was convicted. The Superior Court of the Brunswick Circuit affirmed the conviction on certiorari.[2]

---

[1] All emphasis in this brief supplied by writer.

[2] Appellant in brief, page 11, charges City officials with having knowingly made misrepresentations. While the matter is not relevant, such charge cannot be passed unnoticed. It is, of course, inserted in an attempt to prejudice. It is absolutely false.

On certiorari from Mayor's Court the City made motion to dismiss on ground that the bond was approved by Mrs. Sharpe who was not Clerk of Mayor's Court but of City Council. (Griffin v. City of Albany, 88 Ga. App. 229.) Appellant replied that her attorney had asked the City's attorney if Mrs. Sharpe was Clerk of Mayor's Court and had received an affirmative reply. As to what

The Georgia Court of Appeals affirmed on the ground that the constitutional question has not been properly presented and the Supreme Court of Georgia denied certiorari.

JURISDICTION.

This Court noted probable jurisdiction. Such ruling does not preclude further consideration of the jurisdictional question.

The judgment of the Court of Appeals of Georgia appealed from, did not make any decision on the constitutional questions raised by appellant but was based on a question of procedure under State law. The grounds on which the judgment of the State court were based and the authority therefor was discussed in appellee's motion to dismiss. Attention is again called thereto by reference.

The cases cited by the Court of Appeals on these specific questions have never been reversed and remain the law of this State. The Georgia cases cited by appellee do not hold to the contrary.

If the State Court sought to evade the constitutional questions and based its decision on spurious grounds (jurisdictional statement, p. 31, note 16), then the jurisdiction of this Court could not be questioned. Just as well settled

---

was the question and the answer, it was a disputed issue. The issue was resolved in favor of the City by the Superior Court Judge. It is not believed that Mr. Wilson, trial attorney for appellant, would knowingly make a misrepresentation in a legal proceeding; and the writer never has nor would do so.

Mrs. Sharpe testified at the trial in Mayor's Court that her position was that of Clerk of City Council (R. 23). The questions and answers appear in brief of evidence on file in Superior Court as follows:

"Q. What position, if any, Mrs. Sharpe, do you hold with the City of Baxley?
A. Clerk of City Council.
Q. How long have you held that?
A. Since February, 1953."

is the principle that if there is no question of evasion this court should accept the ruling of the State Court on matters of State law, either of fact or practice.

Fox River Paper Co. v. Railroad Commission, 274 U. S. 651.

State law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law.

Hagan John v. Lewis Paulin, 231 U. S. 583.

The Georgia Court of Appeals decided the case on local procedural rules of long standing.. The fact that such points may not have been made or passed on in other cases decided is not unusual but is most frequently the case. The motion to dismiss should be granted.

SUMMARY OF ARGUMENT.

Under the facts of this case appellant was engaged in the City of Baxley in her regular occupation, that of a union organizer, in connection with which she was attempting to sell memberships in the union to citizens of Baxley. Under such circumstances the conviction of appellant for the violation of a city ordinance requiring her to obtain a permit before engaging in her occupation in the City of Baxley did not violate her constitutional rights.

CONSTITUTIONALITY OF THE ORDINANCE.

The effect of the ordinance is to require a permit for one selling memberships in an organization. While the term "solicit" is used, the ordinance provides on its face that it only applies to organizations requiring payment of dues, or that may assess dues against its members. In ordinances with respect to sale of articles the word "solicit"

is used as synonymous with the word "sell." To obtain the membership of a person in an organization requiring payment of dues is not unlike the selling of any article or service with payments to be made in the future.

Myriad state and municipal laws requiring licenses of peddlers, salesmen, traders, brokers, insurance agents, real estate operators, undertakers, veterinarians, doctors and lawyers are enforced and their validity accepted as a matter of course.

Not unusual are ordinances requiring information in the application for a permit those: who peddle a five cents article along the street, who sell a tract of real estate, who insure improvements on property, render medical services, give legal advice or prepare our bodies for burial. In each instance it could and has been argued that the freedoms guaranteed by the Constitution were violated by such restrictions. The answer follows that when the welfare of the public requires reasonable restrictions are valid.

As pointed out in appellant's brief (appellant's brief, p. 37, note 23) the trade of a union organizer is a regular occupation followed by many for which training is required and given. It was the occupation being followed by appellant in the City of Baxley. In that respect it is not different from any other occupation or trade for the following of which the state and municipalities may enact regulations, not primarily for the revenue that may be produced, but to protect the public against lack of skill or character in the person who would follow the occupation of selling services or articles.

"The power of the State to provide for the general welfare of its people authorized it to provide all such regulations as in its judgment will secure, or tend to secure, them against the vagrancies of ignorance and

incapacity, as well as deception and fraud. As a means to this end it has been the practice in different states from time immemorial to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination by parties or competent persons. . . ."

Dent v. State of West Virginia, 129 U. S. 114.

A few of the instances in which this court has held legislation requiring licenses prior to the following of an occupation to be valid where practically the same contentions were made as are here made, are:

Osteopath—**Collins v. State of Texas, 223 U. S. 228;**
Dentist—**Graves v. State of Minnesota, 272 U. S. 425;**
Employment Agency—**Leroy Brazee v. State of Mich., 241 U. S. 340;**
Vender of farm products—**Payne v. State of Kansas, 248 U. S. 112;**
Insurance agent—**LaTournette v. McMaster, 248 U. S. 465;**
Real estate broker—**Bratton v. Chandler, 260 U. S. 110.**

The importance to public security of knowing the character and ability of those who sell services and products to the public has long been recognized and regulations to such an end consistently held valid. Is it less important to know the character of an individual seeking to sell memberships in an organization, an organization which may not only seriously affect the course of the individual member's life, but may well have a definite effect upon the welfare of the community in which such organization exists?

No one could question that labor unions have played an important part in the progress of our society. Likewise, many other organizations, including civic clubs, fraternal

organizations, civic organizations and religious organizations and societies have been most beneficial. It is not to be any less doubted that subversive organizations controlled by questionable characters can and do adversely affect the public welfare and order. Could "Dio organizers"[3] of phony union local charters operate if municipal regulations existed of the type here requiring information as to the organizer and the organization? Is there any doubt that mobsters, taking advantage of lack of local regulations constitute a present, grave menace to not only the public generally but especially to organized labor?"

License Fee Not Involved.

A substantial portion of appellant's brief is devoted to Section VI of the ordinance which section provides for the payment of a license fee under certain circumstances. In the motion to dismiss on behalf of appellee it was conceded that this particular section of the ordinance was invalid. (Motion to dismiss p. 9.) Therefore, in this brief we will not devote any time to that question.

No Application Filed.

Appellant not having filed an application for the permit is not in position to contend that any particular section of the ordinance is void but must rely upon every material section being invalid. Then too, in view of the long standing rule that public officers will be presumed to act within their legal authority, the presumption follows that no invalid section of the ordinance would have been enforced against appellant if application had been filed.

In **Grundling v. Chicago, 177 U. S. 183**, the appellant, who likewise had not applied for the license in question, contended the ordinance requiring it unconstitutional be-

---

[3] Time Magazine, August 19, 1957, p. 11.

cause the power vested in the mayor to grant was arbitrary. This Court there stated:

> "He made no application, the mayor had not refused it non constat that he would have refused it if application had been made by the plaintiff in error. Whether the discretion of the mayor is arbitrary or not would seem to be unimportant to the plaintiff in error so long as he made no application for the exercise of that discretion in his favor and was not refused a license."

The One Question.

The sole question on the merits is whether a municipality may require one who claims the occupation of union organizer to secure a permit before selling memberships to citizens of the municipality.

A similar question was discussed at length in the case of **Thomas v. Collins, 323 U. S. 516.** Every argument, pro and con, that could be made here appears to have been reviewed in that case. A repetition at length would seem an imposition on the patience of the Court.

In Thomas v. Collins there was involved a Texas statute which prohibited solicitation of members to join a Union prior to obtaining an organizer's card. It was held, **as applied to the facts of that case,** the statute violated appellant's constitutional rights. The decision insofar as it holds the statute invalid restricts itself to the facts of the case. "We do not undertake to determine Section V in any other application than that made upon the facts of the case."[4]

It answers in the negative appellant's contention that Congress occupied the field of labor regulations and

---

[4] This and all quotations hereafter are from Thomas v. Collins, 323 U. S. 516.

closed it to State regulations holding: "That the State has the power to regulate unions with a view to protecting the public interest, is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulations. A majority of the Court do not agree that Section V, or its application, conflicts with National Labor Relations Act."

The decision pointed out that the sole purpose of Thomas going to Houston was to address a meeting held in connection with a campaign to organize a local Labor Union. The contested restraining order was issued in contemplation of his speech to restrain him from any language which could be taken as solicitation, general or specific. Primarily the only action of Thomas was in a speech to tell of the advantages and disadvantages of a union and joining a union. He did not solicit funds or property and neither asked for or accepted funds or property for the union at the time of his address or while in Texas. "Thomas went to Texas for one purpose, and one only, to make the speech in question. Its sole object was to publicly proclaim the advantages of Workers' Organization and to persuade workmen to join Local No. 1002 as a part of a campaign for members. These were the sole objectives of the meeting . . . The invitations, both general and particular, were parts of the speech, inseparable incidents of the occasion and all of that was said and done."

Under those facts this Court held that the Texas statute as applied in that instance denied Thomas his constitutional rights. If the facts in the present case are not distinguishable, then the ruling in the Thomas case would apply. They are distinguishable.

In Thomas v. Collins as above pointed out, the sole purpose of the visit of Thomas to Houston was to address a meeting in a campaign to organize a Labor Union. Any solicitation of membership on his part was incidental. In

the instant case it is apparent that appellant is one whose occupation is the selling of memberships in unions. Any discussion of benefits of unions and memberships in them is incidental to the primary purpose of obtaining subscribers to memberships. This occupation of appellant which was being carried on in Baxley, of course, involved speech on the part of Rose Staub. Any selling job does. Whether it is the sale of articles of merchandise or professional services. She was seeking to induce citizens of Baxley to secure membership cards upon the payment in advance of four weeks dues at 64¢ per week. She had membership cards with her and was offering to deliver them upon the payment of such amount. Her actions brought her directly within the ruling of Thomas v. Collins: "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes collection of funds or securing subscriptions, he enters a realm when reasonable restriction or identification requirements may be imposed."

Here appellant, according to the evidence, sought to collect funds and secure subscriptions to memberships. Her actions made her occupation subject to reasonable regulations. Requiring her to file application giving the usual information with respect to the organization for which members were sought, and previous residence and employment of applicant (Section 11, R. 10) could not be said to be unreasonable. To hold that under such circumstances it is a violation of her constitutional rights for a legislative unit of government to require her to obtain a permit before engaging in such occupation within its province, would necessarily place such occupation in a special sphere.

Appellant contends that labor unions should be exempt from municipal regulations because in the power of regulation lies the power to destroy by preventing organized

efforts to obtain subscriptions for membership. This presupposes general public desire to prevent the existence of labor unions. We would not assume such supposition to be true. The benefits to labor through unions is universally recognized. It is the prevention of subversive organizations through the efforts of disreputable parties, sometimes using the good will of organized labor as a selling factor, that should be controlled in the interest of public welfare.

It is believed that such control can be most effective at local levels. In spite of appellant's apparent fear of municipal regulation, such local control exists with respect to occupations and trades, in practically all fields. We do not believe there could be cited any instance in recent times where such local control has caused any legitimate, worthwhile occupation or trade to cease to exist. Can it be doubted that without such control the existence of organized society would be gravely menaced?

With Section VI eliminated the ordinance is a reasonable regulation. It is a means through which municipal officials can have information with respect to the persons seeking to sell its citizens organization memberships, and of the nature of the organization. It will prevent the selling of memberships by questionable characters in subversive, phony, and fraudulent organizations. It is a needed regulation within the police power of the City.

We respectfully submit that the judgment of Georgia Court of Appeals should be affirmed.

J. H. HIGHSMITH,
Attorney for City of Baxley.

J. H. Highsmith,
Baxley, Georgia.

APPENDIX.

Charter City of Baxley.

Ga. Laws 1911, p. 700 at p. 725.

Section 60.

"That the City Council shall have the right and power to pass all such ordinances, bylaws, rules and regulations as may in their discretion be necessary to carry out and enforce the authority granted under this charter, and as they may think necessary for the good, order, peace, health, prosperity, comfort and security of said city and the inhabitants thereof . . ."

Office - Supreme Court, U.S.
FILED
AUG 24 1957
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957

Docket No. 48

ROSE STAUB,

Appellant,

—against—

CITY OF BAXLEY,

Appellee.

BRIEF FOR *AMICUS CURIAE*

CARL RACHLIN
Counsel for the
Workers Defense League
11 West 42nd Street
New York 36, New York

RACHLIN, MIGDAL & LOW
LEON BECKER
JOHN C. SOMERS
Of Counsel
of the Bar of New York

TABLE OF CONTENTS

Table of Cases

	PAGE
Cantwell v. *Connecticut*, 310 U. S. 296	7
Hague v. *CIO*, 307 U. S. 496	7, 10
Herndon v. *Lowry*, 301 U. S. 242	10
Jones v. *Opelika*, 316 U. S. 584	9
Lovell v. *Griffin*, 303 U. S. 444	7, 10
Marsh v. *Alabama*, 326 U. S. 501	10
Martin v. *Struthers*, 319 U. S. 141	10
Murdock v. *Pennsylvania*, 319 U. S. 105	9
Schneider v. *State*, 308 U. S. 147	7, 10
Thomas v. *Collins*, 323 U. S. 516	11

Statute

Ordinance of the City of Baxley, Georgia	3

Supreme Court of the United States

OCTOBER TERM, 1957

ROSE STAUB,

Appellant,

—against—

CITY OF BAXLEY,

Appellee.

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE, AS *AMICUS CURIAE*

Interest of the Workers Defense League

This brief is filed on behalf of the WORKERS DEFENSE LEAGUE as *amicus curiae* with the consent as submitted to this Honorable Court, of the attorneys for the respective parties. The WORKERS DEFENSE LEAGUE is a nation-wide, non-profit organization whose members are lawyers and laymen vitally interested in the fundamental personal rights guaranteed to individuals by the Constitution of the United States and of the various states.

A free and democratic trade union movement is of the greatest necessity in these difficult times. Perversion of free trade unionism occurs behind the

"iron curtain". It is to the interest of all Americans and to the Free World that we show that we do not encourage the prohibition or improper limiting of the legitimate right of Americans to organize into free associations for their mutual benefit.

Having these beliefs, we urge, for the reasons stated below, that the ordinance in question is a less than thinly disguised attempt at prohibiting trade-union activity.

As will be seen below, no mention has been made of issues which may well be raised by the parties; namely, whether Congress has preempted the area encompassed by this ordinance; and whether on these facts the ordinance was applied unconstitutionally. By omitting them, we do not demean their importance, but rather limit our concern to matters we believe to be directly within the purview of the WORKERS DEFENSE LEAGUE.

We respectfully request and pray that this brief be accepted by this Honorable Court.

Statement

This brief is submitted on behalf of the WORKERS DEFENSE LEAGUE as *Amicus Curiae*. Consents have been obtained from both parties and are filed herewith. In the aid of brevity, no statement of the case or of the facts is made. That we leave to the respective parties, believing that the important issues concern law.

Outline of Argument

The Ordinance of the City of Baxley is void on its face because:

(a) The discretionary power to grant the license is so broad as to make the ordinance unconstitutional as an improper restraint on speech and assembly.

(b) The tax as set forth in this ordinance represents an unconstitutional invasion of speech and association protected under the First Amendment to the Constitution of the United States and protected against invasion by the respective states in the Fourteenth Amendment.

(c) Under the guise of regulation the ordinance prohibits the right of free association and speech and is thus unconstitutional.

Ordinance of the City of Baxley, Georgia

"AN ORDINANCE TO REGULATE THE SOLICITATION OF MEMBERSHIP IN ORGANIZATIONS AMONG THE CITIZENS OF THE CITY OF BAXLEY; TO PROVIDE FOR PERMITS FOR PERSONS OR AGENTS SOLICITING SUCH MEMBERS; TO PROVIDE FOR LICENSE FEES AND FOR VIOLATION OF THIS ORDINANCE.

BE IT AND IT IS HEREBY ORDAINED BY MAYOR AND COUNCIL OF CITY OF BAXLEY AS FOLLOWS:

Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payments of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of

Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.

Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicant's character. Said application shall also furnish the information as to whether applicant is a salaried employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in the event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

Section V. The granting or refusing to grant of such application for a permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

Section VI. In the event that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or received a fee of any sort from the obtaining of such members, he shall be issued a permit and license for soliciting such members upon the payment of $2000.00 per year. Also $500.00 for each member obtained.

Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens or persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

Section VIII. All Ordinances of City of Baxley in conflict with ordinance are hereby repealed.

Section IX. Should any section or portion of this Ordinance be held void, it shall not affect the remaining sections and portions of same.

Duly adopted by Mayor and Council of City of Baxley in regular meeting duly assembled on the 17th day of Sept., 1949.

/s/ C. A. WHITAKER, Mayor, /s/ J. H. KEELS, Clerk."

Recorded in City of Baxley Minute Book 3, page 396.

I. The ordinance of the City of Baxley, Georgia, is void on its face because:

A. The Discretionary Power to Grant a License Is So Broad as to Make the Ordinance Unconstitutional as an Improper Restraint on Speech and Assembly.

The ordinance in question does not purport to regulate the acquisition of funds, its distribution, management, or similar financial matters. Section I of the ordinance makes it mandatory for a person desiring to "solicit" members for any organization, union, or society, to apply in writing to the Mayor and Council for the issuance of a permit. Under Section V, the granting or denial of such a permit is discretionary with the Mayor and Council of the City of Baxley. Section VII proposes to punish a person for "soliciting" members for an organization without a permit. A literal construction of this ordinance makes punishable the act of writing about or explaining to another the advantages of joining or belonging to a lodge, labor union or religious society, without first obtaining permission from the Mayor and Council.

Such broad discretionary power as set forth in Sections III-V has often been stricken down by this Court in dealing with similar ordinances. Cf. *Lovell* v. *Griffin,* 303 U. S. 444, 450-452; *Hague* v. *C. I. O.,* 307 U. S. 496; *Cantwell* v. *Connecticut,* 310 U. S. 296, 304; see also *Schneider* v. *State,* 308 U. S. 147; supra, where an ordinance which made it incumbent upon a City Manager to issue a license was held invalid on its face because it gave the issuing authority too broad a discretionary power to revoke the license.

The grant of too broad a discretionary power has wisely been curtailed by this court. Unless the power to grant a license is merely ministerial, the power may be subjected to such abuse as to be destructive of free association and speech, under constitutional protection.

It is clear that no authority of government should be used in favor of one or the other party in industrial matters. Pursuant to this ordinance, however, the official with whom the discretionary power resides may refuse to license one party and grant such a license to another in a labor-industrial dispute.

Furthermore, a political rather than a ministerial official is the repository of the power. Thus a Democratic Party organizer in Baxley, Georgia, might be refused a license should the licensing official be a Republican. An ordinance which may be subject to such abuse, we urge, must be stricken as violative of the constitution.

We do not wish, at this time, to express any general opinion regarding the validity of legislation merely

providing for disclosure or identification of persons acting as a labor organizer. A consideration of this question is not necessary to a decision of this case. In any event, it could hardly be contended that the Baxley ordinance is ministerial only, or that its primary purpose is to insure the identification of persons acting as labor organizers.

B. The Fees as Set Forth in This Ordinance Represent an Unconstitutional Invasion of Speech and Association Protected Under the First Amendment to the United States Constitution and Protected Against Invasion by the Respective States in the Fourteenth Amendment.

In applying for a permit, Section VII of the ordinance requires a *salaried* employee or officer of an organization seeking members from among the citizens of Baxley or *persons employed in the City of Baxley* to pay the flat sum of *$2,000.00* per year, and *$500.00* for each member obtained.

Compliance with this provision is a practical impossibility. It was observed by the Clerk of the City Council that during her tenure of office, she had never seen anyone apply for a license to solicit members for an organization (R. 23). The fee of $500.00 per member for soliciting charged by Baxley could not be recovered for almost 15 years on the basis of dues of 63¢ per week as referred to herein (R. 25). It is not necessary to consider the right of a locality to make reasonable regulations concerning solicitation of union members since a license fee of $2000. and $500. per member constitutes prohibition, not regulation. Not one person had applied for a license (R.

23). Ironically, the ordinance allegedly should "provide for permits" for soliciting members. On their face, however, the fees charged bear not a scintilla of relationship to granting licenses, but are prohibitive in fact. We urge that thinly veiled attempts to prohibit the organization of persons voluntarily into free trade unions, should be stricken down by this Court. What constitutes appropriate regulation as distinct from prohibition may be difficult to define under other circumstances. In the case at bar, however prohibition is so clearly perceived, a careful examination of that question is not, we respectfully urge, necessary.

As such, the provision falls under the aegis of those cases which hold that "A state cannot impose a charge for the enjoyment of a right granted by the Constitution", *Murdock* v. *Pennsylvania*, 319 U. S. 105, 113; cf. *Jones* v. *Opelika*, 316 U. S. 584, 609.

C. Under the Guise of Regulation the Ordinance Prohibits the Right of Free Association and Speech and Is Thus Unconstitutional.

This ordinance is so broadly drawn that the free exchange of ideas, the urging of a certain course of conduct, the free association of people are subject to the penalties of the law. The right to speak one's mind fully is hampered. Apparently, should a union have a paid organizer, then even unpaid interested persons are prevented from urging members of the community to join the union, despite the fact they may all have a direct community of interest.

The Court has on numerous occasions, reasserted the proposition that in the absence of a clear and

present danger, freedom of speech, press and assembly are guaranteed under the First Amendment to the Constitution of the United States and protected against any unreasonable invasion by a municipality or any state in the exercise of its police power by the Fourteenth Amendment to the Constitution of the United States. In *Hague* v. *C. I. O.*, supra, the ordinance was held void on its face because it provided for prior censorship of the right of speech and assembly in appropriate public places.

Similarly, neither a state nor a municipality may bar completely, the distribution of literature containing religious or political ideas on its streets, sidewalks or public places, or make the right to distribute dependent on a flat license permit tax or permit to be issued by an official who could bar it at will, because "the struggle for freedom of the press was primarily directed against the power of the licensor" for the "right to publish without a license what formerly could only be published with one." *Lovell* v. *Griffin*, 303 U. S. 451, 452. The right to disseminate ideas has been extended to the public streets, see *Martin* v. *Struthers*, 319 U. S. 141; and to company or privately owned towns, *Marsh* v. *Alabama*, 326 U. S. 501. Nor can it be said that the protected liberties are limited as to subject matter, *Herndon* v. *Lowry*, 301 U. S. 242, or to a particular class of persons, *Schneider* v. *State*, supra.

Close judicial scrutiny of possible limitations on the constitutional rights of citizens has been made by this Court expressly including the protection of the constitution to the free dissemination of *ideas* or opinions

concerning labor-management relations by labor representatives. This court stated in *Thomas* v. *Collins*, 323 U. S. 516, 531-532:

> "This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. Cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Meyer* v. *Nebraska*, 262 U. S. 390; *Prince* v. *Massachusetts*, 321 U. S. 158. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religous or political ones. And the right of free speech and free press are not confined to any field of human interest . . . This Court has recognized that in the circumstances of our times, the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution . . . Free discussion concerning the conditions in industry and the causes of labor disputes appear to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern society." *Thornhill* v. *Alabama*, 310 U. S. 88, 102-103; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 478. "The right to inform people concerning the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly. *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496."

Free discussion of labor problems and industrial relations is, and must be, a protected activity under the Constitution of the United States.

II. For the reasons stated above we urge that this Honorable Court reverse the judgment of the Court below.

Respectfully submitted,

CARL RACHLIN
Counsel for the
Workers Defense League
11 West 42nd Street
New York 36, New York

RACHLIN, MIGDAL & LOW
LEON BECKER
JOHN C. SOMERS
Of Counsel
of the Bar of New York

LIBRARY
SUPREME COURT, U.S

Office - Supreme Court, U.S.
FILED
AUG 24 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 48

ROSE STAUB,

Appellant,

vs.

CITY OF BAXLEY,

Appellee.

Appeal from the Court of Appeals of the State of Georgia

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

MURRAY A. GORDON,
401 Broadway,
New York 13, New York,
Counsel for the American Civil Liberties Union Amicus Curiae.

ROWLAND WATTS,
of the Maryland Bar,
of Counsel.

INDEX

	PAGE
Interest of American Civil Liberties Union	1
Statement of the Case	2
Argument:	
The ordinance constitutes an unconstitutional deterrent to the citizenry of Baxley to associate in any membership organization and an unconstitutional restraint upon such lawful organizations to solicit and enlist membership among such citizenry	2
Conclusion	6

Table of Cases Cited

Ashwander v. TVA, 297 U. S. 288	4
Barrows v. Jackson, 346 U. S. 249	5
Bowe v. Commonwealth, 69 N. E. 2d 115 (Mass.)	4
Burton v. United States, 196 U. S. 283	4, 5
Cantwell v. Connecticut, 310 U. S. 296	4
DeJonge v. Oregon, 299 U. S. 353	4
Fiske v. Kansas, 274 U. S. 380	4
Hague v. CIO, 307 U. S. 496	4
Herndon v. Lowry, 301 U. S. 242	4
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123	4
Largent v. Texas, 318 U. S. 418	4
Lovell v. Griffin, 303 U. S. 444	4
Murdock v. Pennsylvania, 319 U. S. 105	4

PAGE

Reid v. Covert, 354 U. S. 1 5

Schneider v. Irvington, 308 U. S. 147 4

Thomas v. Collins, 323 U. S. 516 4

Thornhill v. Alabama, 310 U. S. 88 5

United States v. Cruikshank, 92 U. S. 542 4

United States v. International Union, etc., 352 U. S. 567 4

Watkins v. United States, 354 U. S. 178..... 5

Wieman v. Updegraff, 344 U. S. 183 5

Whitney v. California, 274 U. S. 357 4

Authorities Cited

American Jewish Congress, *Assault Upon Freedom of Association* (1957), pp. 39-44 4

Highsmith, J. H., *Letter of Consent* for American Civil Liberties Union to file *amicus curiae* brief .. 3

IN THE

Supreme Court of the United States

October Term, 1957

No. 48

ROSE STAUB,

Appellant,

vs.

CITY OF BAXLEY,

Appellee.

Appeal from the Court of Appeals of the State of Georgia

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union appearing herein with the consent of the parties filed with the Clerk of this Court is a nationwide, non-partisan, non-profit, membership organization devoted to the protection and furtherance of civil liberties. It has no affiliation of any kind with any of the parties herein and is interested in this case solely because the ordinance under review raises those issues of constitutional limits upon local encroachment on freedom of expression and association which for many years have deeply concerned the American Civil Liberties Union.

Statement of the Case

This brief is submitted by the American Civil Liberties Union in support of the contention by appellant that the ordinance under which she was convicted is violative of the Due Process Clause of the Fourteenth Amendment.

We do not repeat the statement of facts to be found in the briefs of the parties, nor do we presume to re-canvass those arguments of constitutionality which appellant has already comprehensively developed insofar as they are directed specifically to labor organizations. We support those arguments but our discussion relates to the impact of the ordinance upon organizations other than labor unions.

ARGUMENT

The ordinance constitutes an unconstitutional deterrent to the citizenry of Baxley to asosciate in *any* membership organization and an unconstitutional restraint upon such lawful organizations to solicit and enlist membership among such citizenry.

Appellant was convicted for acting as a paid union organizer without complying with the licensing requirements of the ordinance. It is, therefore, appropriate for her to measure the ordinance in terms of its impairment of the constitutional and statutory rights surrounding union organizational activity; but the ordinance does not confine its area of application to labor unions. It covers solicitation of membership "for any organization, union or society of any sort which requires from its members the payments of membership fees, dues or is entitled to make assessments against its members" (R. 10). Indeed, appellee has made

explicit that the ordinance looks to the control of political and other organizations.[1]

If this ordinance is upheld in the case of a labor union organizer, we can see no constitutional basis for denying its extension to the organizer of any religious, charitable, humanitarian, cultural, social or political "organization, union or society" which depends upon "fees, dues or * * * assessments" for its financing. This ordinance requires without exception, that anyone enlisting membership in the Baxley, Georgia, local chapter of any organization ranging from the American Civil Liberties Union to the American Automobile Association, from the Boy Scouts of America to the Democratic Party, from Alcoholics Anonymous to the American Medical Association, and from the National Association for the Advancement of Colored People to the Ku Klux Klan must first attain the approval and license of the Mayor and Council of the City of Baxley. If the solicitor is a "salaried employee or officer", he, also, must pay $2,000 per year for a license and $500 as a fee for each member "obtained" (R. 11).

This ordinance lacks neither clarity nor boldness; in unmistakable terms it makes mandatory the described

---

[1] J. H. Highsmith, attorney for the City of Baxley, Georgia, in granting the City's consent to the American Civil Liberties Union to appear *amicus* in this appeal, stated:

> "The primary motive of the municipal ordinance involved in the above stated case is to protect the citizens of this community against being unknowingly sold memberships in subversive organizations by parties of questionable reputation. To afford such protection the officials of the municipality must have some means of acquiring information as to the organizations being formed and the persons soliciting members therein. The provisions of the ordinance provide for such information. I believe that one of the dangers to our form of government is the lack of adequate protection against the inroads of subversive organizations. Greater interest needs to be aroused in eliminating the danger of such menace."

Letter of consent dated February 12, 1957, filed with the Clerk of this Court.

licensing and fee payment in the instance of the organizer of "any organization" sustained financially by its membership. It is unnecessary to document how many membership organizations are so sustained, and how few of those could survive in Baxley the twin burdens of license and fee. If this ordinance is enforced according to its terms, the City of Baxley will have legislated itself into social and political extinction. We believe that the First Amendment, as incorporated in the Fourteenth Amendment forbids such total regulation, if not suppression, of the associational activities which lie at the heart of the effective freedom of expression intended to be guaranteed by the First Amendment. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123; *Fiske* v. *Kansas*, 274 U. S. 380; *Herndon* v. *Lowry*, 301 U. S. 242; *Thomas* v. *Collins*, 323 U. S. 516; *De Jonge* v. *Oregon*, 299 U. S. 353; *Bowe* v. *Commonwealth*, 69 N. E. 2d 115 (Mass.); *cf. United States* v. *Cruikshank*, 92 U. S. 542; see *Whitney* v. *California*, 274 U. S. 357, 371-2; see also American Jewish Congress, *Assault Upon Freedom of Association* (1957), pp. 39-44.

When it is recognized that this ordinance does affect an enormous and significant variety of First Amendment rights, the legislation must be stricken pursuant to the decisions of this Court which have invalidated prior registration (*Thomas* v. *Collins*, 323 U. S. 516), discretionary licensing (*Schneider* v. *Irvington*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Lovell* v. *Griffin*, 303 U. S. 444; *Largent* v. *Texas*, 318 U. S. 418; *cf. Hague* v. *CIO*, 307 U. S. 496), or a flat license tax (*Murdock* v. *Pennsylvania*, 319 U. S. 105) as a condition to the exercise of the freedoms contemplated by the First Amendment.

In other circumstances a "parade of horribles" might be inappropriate where the case at hand deals directly with a labor organizer. *United States* v. *International Union*, etc., 352 U. S. 567; *Ashwander* v. *TVA*, 297 U. S. 288; *Bur-*

ton v. *United States*, 196 U. S. 283. But the ordinance here properly and forcefully compels consideration of the consequences it imposes upon all manner of associational activity. This is so not only because even "Slight encroachments create new boundaries from which legions of power can seek new territory to capture" (*Reid* v. *Covert*, 354 U. S. 1, —, 1 L. Ed. 2d, 1148, 1176), but also because the ordinance works its injury upon freedoms of association and expression by the threat as well as the fact of enforcement. The language of the statute is mandatory and all-inclusive. No responsible membership organization, confronted with criminal penalty for non-compliance, could safely rely upon laxness in enforcement. The existence of the ordinance is a potential deterrent to any membership organization contemplating activity in Baxley; if the ordinance is sustained in this case, every such organization necessarily would consider that the statute presents the alternatives of registration, license, and exorbitant fees or inactivity. Legislation which thus, by its very existence, impairs the free exercise of First Amendment rights must be tested on its face and with due regard for its radiational effect beyond the immediate case at bar. *Thornhill* v. *Alabama*, 310 U. S. 88; *Watkins* v. *United States*, 354 U. S. 178, — , 1 L. Ed. 2d 1273, 1290; *Wieman* v. *Updegraff*, 344 U. S. 183, 190-1; *cf. Barrows* v. *Jackson*, 346 U. S. 249, 257-8.

When the ordinance under review is so considered, the many constitutional infirmities of the statute pointed out by appellant become even more significant. For at stake here is not only the important freedom of a labor union to organize, but the right of "any organization, union or society of any sort" supported by its membership to exist in Baxley or in any other community which may decide to venture into the business of foreclosing its citizenry to lawful solicitation of membership in lawful organizations.

CONCLUSION

By reason of the foregoing, the judgment of conviction should be reversed.

Respectfully submitted,

MURRAY A. GORDON,
401 Broadway,
New York 13, New York,
Counsel for the American Civil Liberties Union Amicus Curiae.

ROWLAND WATTS,
of the Maryland Bar,
of Counsel.